

Forstyt Saga," and the many excellent programs produced by local stations.

Public Broadcasting has turned the corner and the time has come for it to receive the wholehearted support it has earned and so richly deserves.

The public interest will be served by the enactment of this legislation.

PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

The Senate proceeded to consider the bill (S. 782) to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy which had been reported from the Committee on the Judiciary with amendments on page 2, line 16, after the word "origin", insert "or citizenship"; in the same line, after the word "employee", insert "or person or of his forebears"; on page 8, after the word "requests," insert "Provided, however, That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved."; on page 18, line 19, after the word "Agency", strike out "or of the Federal Bureau of Investigation"; on page 19, line 4, after the word "designee", strike out "or the Director of the Federal Bureau of Investigation or his designee"; in line 9, after "Sec. 7." insert "No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.*"

After line 23, insert a new section, as follows:

Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

On page 20, after line 9, insert a new section, as follows:

Sec. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

In line 12, change the section number from "7" to "10"; and on page 21, line 3, change the section number from "8" to "11"; so as to make the bill read:

S: 782

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: Provided further, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.*

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however, That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.*

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: Provided further, however, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: Provided, further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.*

(f) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or groups of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however, That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.*

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of in-

public support may be seriously undermined.

Such a commitment can best be given, of course, by permanent, long-range financing for the Corporation. From the beginning it was understood that the authorization and appropriation process was only an interim one, until such time as the Administration could submit a permanent financing plan to the Congress. Your Committee has repeatedly urged this Administration and its predecessor to act in this respect. It is hopeful that such a plan will soon be forthcoming.

In the meantime, however, the Corporation must have funds if it is to continue to grow and aid the development of public broadcasting.

Your Committee believes that the provisions of S. 3558 represent an extended commitment by Congress to this worthwhile endeavor, and urges its enactment.

By authorizing the appropriation of such sums as may be necessary for fiscal years 1971, 1972, and 1973, enactment of the legislation would remove the present necessity of authorizing funds each year.

The ability to plan and negotiate projects on more than a yearly basis is vital in broadcasting, especially in the expanding medium of broadcasting. The present necessity of yearly authorizations has, your Committee was told, inhibited the Corporation from making longer-range plans.

S. 3558 would also authorize part of the appropriated funds to match a dollar for dollar basis, grants, donations, bequests or other contributions received by the Corporation from non-Federal sources.

Your Committee feels that this is an excellent manner to generate wider support for the Corporation. It is hoped that many of the commercial broadcasters who have so often attested to the merits of public broadcasting and the Corporation will choose to assist the Corporation under this provision.

Your Committee also wishes to draw attention to the section of the Public Broadcasting Act which provides that interconnection service can be provided by carriers at "free or reduced rates." The availability of an effective distribution system is basic to the expansion and improvement of public broadcasting.

In the negotiations that are currently underway or may go on in the future for establishing an interconnection system, your Committee hopes that the parties will exhibit the same spirit and commitment that is expected of all segments of the society and government if we are truly to have a vital system of public broadcasting.

At this time your committee also wishes to re-emphasize that noncommercial television and radio, even though supported by Federal funds, must be absolutely free from any Federal Government interference over programming. This also means that the Corporation and the individual stations are to be insulated from the threat of political control and special interest influence from any source whatsoever.

HEARINGS

Your committee conducted 2 days of intensive hearings on S. 3558, during which it heard testimony from a representative of the Department of Health, Education and Welfare; the Chairman of the Federal Communications Commission; the Chairman of the Board and President of the Corporation for Public Broadcasting, respectively; the President of the National Association of Educational Broadcasters, and others. All witnesses testified to the outstanding efforts of the Corporation and its contribution to public broadcasting.

While the witnesses recognized the desirability, indeed the necessity of a plan for permanently financing the activities of the Corporation, all urged enactment of S. 3558 pending the adoption of such a plan.

Honorable James Allen, Assistant Secretary of Education, and U.S. Commissioner of Education, testified for the Administration and said that a three-year authorization is essential to allow the Corporation to plan effectively and to commit funds for radio and television projects for the home as well as the school on a more than one-year basis.

The Chairman of the FCC, Dean Burch, supported enactment of S. 3558 as a needed extension of the interim financing for the Corporation. He also stressed the crucial importance of obtaining for the Corporation at the earliest possible time a permanent financial base not dependent upon annual appropriations. Too great a delay in finding the permanent financing solution will, he said, adversely affect the development of the Corporation and thus of the nation's noncommercial educational broadcasting systems.

Mrs. Joan Ganz Cooney, creator of "Sesame Street," and president of the Children's Television Workshop, testified that public television should and clearly can set the benchmark against which all of television is judged.

"Non-commercial broadcasting, she said, has not heretofore had enough money to undertake this vital role in American life. The perennial shortage of funds has made it almost impossible to recruit and retain first-rate talent for a continuing period of time and there is very little incentive to conceive the type of innovative broadcasting that takes 1, 2 or 3 years to develop and bring to fruition.

"I hope that this committee will see fit to heed the President's request for extended financing for the Corporation for Public Broadcasting. Only then, in my opinion, will future Sesame Streets be possible."

Mrs. Ann Kahn, representing the National Congress of Parents and Teachers, told the committee that:

"The hard evidence of achievement we have seen firsthand in the short life of the Corporation—and the even greater promise of its plans for the future—make it clear to us that the funds requested in the legislation before you today will represent an extraordinarily wise and economical investment in improved education and opportunities for enrichment of our Nation's children."

The President of the Corporation for Public Broadcasting, John Macy, summarized the activities of the Corporation and its direction for the future when he told your Committee that:

"The introduction of some new programs has been favorably received by the public and is working to improve the relationship between public broadcasting and audiences. As a byproduct, the public seems to be showing its appreciation by a greater willingness to make contributions.

"The interconnection agency, PBS, is in being and beginning to operate.

"National Public Radio has been organized and is ready to begin producing a full radio service as soon as funding can be provided.

"We are probing the boundaries of present technology in order to assure public broadcasting avails itself of the improvements that can be expected in the future.

"We are studying our audiences so as to determine what programs work well and why for the purpose of continually improving the relevance and the communication value of programs we support.

"We are actively engaged in making public broadcasting a more attractive market so that young people, writers, film makers, artists of all types, will think of public broadcasting as a place for their careers and for their creations.

"We have a coordinated plan for the balanced development of Corporation support in the years immediately ahead.

"The crucial missing ingredient is finan-

cing. Authorization for the financing is provided by the bill before you. The Corporation strongly favors the bill and recommends that you act favorably on it."

AMENDMENT

When the Public Broadcast Act was being considered, fears were expressed that the government might influence public broadcasting. As a consequence, the intention that the Corporation and the individual stations be completely free of any outside influence, governmental or otherwise, was expressed in the strongest terms possible by the Congress. The Corporation and the stations are and should be free.

In order to assure that this freedom remains unassailed, your Committee believes that the noncommercial stations should keep adequate records including audio recordings of programs they broadcast that involve public affairs. In that way, if any one seriously questions a station's impartiality or fairness, the record is there and any doubts may be quickly resolved.

Your committee notes that noncommercial stations are presently required by the Corporation for Public Broadcasting to provide a copy of any program to the Corporation which has been specifically underwritten by a grant from the Corporation.

The amendment adopted herein is expressly intended to require noncommercial educational broadcast stations which received assistance under Title II of the Public Broadcasting Act to keep records, including audio recordings, for a reasonable length of time of programs they broadcast involving issues of public importance, and to furnish them to the FCC if requested to do so. The Commission in turn would make them available to the requesting party at his expense under such circumstances and conditions as may be reasonable and appropriate. In other words, where a request is made for an audio recording, the requesting party shall be responsible to the station for the cost for reproducing such recording deemed by the Commission to be reasonable and proper.

It is to be emphasized that the amendment only applies to programs involving issues of public importance such as public affairs and news type programs, and not to programs such as "Sesame Street," "Misterogers Neighborhood," etc.

In order to assure that an onerous burden is not imposed by this amendment, your committee feels that the records kept pursuant to it should be retained for a reasonable length of time, at least three months.

Moreover, where a program is broadcast over many stations such as "The Advocates," it is expected that the Federal Communications Commission will adopt appropriate procedures for determining who will be charged with the responsibility of keeping the required records in individual cases.

The committee wishes to make it clear that any member of the public may make the appropriate request for the audio recordings required to be kept under this amendment.

Your committee also wishes to make it understood that this amendment is in no way intended to infringe on the autonomy of local stations or interfere with program production or content.

CONCLUSION

It cannot be emphasized strongly enough that a nation whose children will have watched 22,000 hours of television by the time they reach 16 years of age, and who itself spends nearly one-quarter of its waking hours watching television, has deeply and irrevocably committed itself to that medium.

The American people have shown that public television has a very special and needed role, as demonstrated by their enthusiastic response and wide acceptance of programs such as "Sesame Street," "The

come, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

Sec. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,*

That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

Sec. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

Sec. 4. Whenever any officer of any executive department or any executive agency of the United States Government or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party

shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

Sec. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of \$75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall

be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(l) Insofar as consistent with the purposes of this section, the provisions of subsection (k) of section 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A)(i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination

or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of \$100,000, to carry out the provisions of this section.

Sec. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

Sec. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however*, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

Sec. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

Sec. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however*, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for

violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further*, That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

Sec. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-873), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the bill is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

S. 782, 91st Congress—Committee amendments

S. 782, as introduced by Senator Ervin with 54 cosponsors, was identical to S. 1035 of the 90th Congress as passed by the Senate.

The Subcommittee met in executive session on July 22, 1969, to receive testimony from Richard Helms, Director of the Central Intelligence Agency and other agency representatives. On the basis of this testimony and after a number of meetings of subcommittee members with officials of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the language contained in the committee amendments was drafted and meets with the approval of the Directors of those agencies.

STATEMENT

The subcommittee has found a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the

future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service.

Third is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations and practices on those of State and local government and of private business and industry. An example of the interest demonstrated by governmental and private employers is the following comment by Allan J. Graham, secretary of the Civil Service Commission of the city of New York:

It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of "Big Brotherism," which constitutes a very real threat to our American way of life.

In my present position as secretary of the Civil Service Commission of the city of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission.

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the benefit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted intrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which pro-

tections the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1035 on February 21, 1967:

If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidance in these matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.

We must have as our point of reference the constitutional principles which guide every official act of our Federal Government. I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.

I introduced this bill originally because I believe that, to the extent it has permitted or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.

Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques.

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however,

also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

As Senator Bible stated:

There is a line between what is Federal business, and what is personal business, and Congress must draw that line. The right of privacy must be spelled out.

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the subcommittee of this proposal in the 89th Congress:

Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employees for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federation affiliated, and independent alike.

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.
E. C. Hallbeck, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL-CIO.

Hon. Robert Ramspeck, former Chairman, Civil Service Commission.

Vincent Jay, executive vice president, Federal Professional Association.

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Spelser, director, Washington office, American Civil Liberties Union.

Nathan Wolkowir, national president, National Federation of Federal Employees.

Mr. ERVIN. Mr. President, S. 782 is a bill, unanimously approved with amendments by the Judiciary Committee, to protect the constitutional rights of civilian employees of the executive branch and to prevent unwarranted governmental invasions of their privacy.

This proposal, which I first introduced in 1966, is the result of a study by the Constitutional Rights Subcommittee.

The purpose of the bill is to prohibit indiscriminate or arbitrary executive branch requests or requirements that employees and, in certain instances, applicants for Government employment:

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Disclose their race, religion, or national origin;

Attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment;

Report on their outside activities or undertakings unrelated to their work;

Submit to questioning about their religious beliefs and practices, personal family relationships or sexual attitudes and conduct through interviews, psychological tests, or polygraphs; and

Support political candidates or attend political meetings.

The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions.

It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest.

It would provide a right to have counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings.

It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

S. 782 is sponsored by 55 Senators. Except for committee amendments providing certain exemptions for the unique problems of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, it is identical to S. 1035, approved by the Senate in 1967.

Mr. President, by approving S. 782, the Senate has recognized the monumental truth that if history teaches us anything, it teaches us that a nation which ignores the lessons of history is doomed to repeat the mistakes of its past. Although the bill is based mostly on unwise and unconstitutional practices and programs undertaken by Federal officials in previous years, many of the injustices continue unabated. Furthermore, the opportunity for depriving the individual rights of employees or of seriously limiting them still exists. It will continue to exist until Congress enacts a law prohibiting such deprivations and limitations.

The extent of the wrongs inflicted on employees will vary with the vigor and zeal and the political needs of those who control the Federal Government. S. 782 is an attempt to define the constitutional boundaries of their actions as they affect those who work for the Federal Government.

Mr. President, more has been written and spoken in the Congress and in the country on this one issue and about this legislation than any other proposal in my memory. This record is documented in the committee report and particularly in the CONGRESSIONAL RECORD of September 13, 1967, when the Senate passed S. 1035.

We have heard much lately of the complaint that Government does not respond quickly and adequately enough to petitions for redress of grievances.

This bill is a direct outgrowth of thousands of specific complaints to Congress by individual employees and their families, by their organizations and unions, by applicants, and by private citizens concerned with loss of liberties. It is proof that Congress does hear and that it will act. These people took the time and effort to communicate their grievances in considerable detail and with an eloquence which always displayed a deep and abiding faith in the system of government of which they are such a vital part. In these times of stress, their continued faith in the democratic process is essential. Despite the obstacles they frequently face, I believe their adherence to those processes is our surest guarantee that the constitutional principles on which our Government is founded will endure.

The letters which I and others in Congress receive are the products of educated and informed concern about the problems which confront employees as citizens. Their patience despite injustices, their willingness to abide by the constitutional rules and to seek remedies under those rules provide the best illustration our Nation can offer of citizens keeping faith with the founders of our Constitution. Congress does not always heed their pleas. There are frequently long delays and the resulting legislation does not always meet their expectations. But the important thing is that they keep trying, writing letters, telephoning, and expressing concern. During the last election campaign many of them demanded that the issues of privacy and employee rights be faced by individual candidates and by both political parties.

The parties and the candidates responded, and I believe they must continue to respond until S. 782 is enacted into law.

I should like to restate for the record my convictions about this proposal which I expressed at the time of its passage in the last Congress. I believe that with this bill, Congress has a chance to reaffirm the belief of the American people in a value system as old as Western civilization; that is, in the dignity of the individual; in the unfettered enjoyment of his personal thoughts and beliefs free of the control of government; and in the worth of the expression of his personality in the democratic society.

S. 782 affords Congress the opportunity to take a stand on one of the most crucial philosophical and practical problems facing our society—the preservation of individual freedom in an age of scientific technology, computers, and data banks.

Many learned people have analyzed the legal and scientific issues raised by the needs to meet certain goals of government in a country as vast and diverse as ours. But they have balanced the interests back and fourth until they have lost track of the basic issues of liberty involved.

The Founding Fathers drafted a constitution that was meant to protect the liberty of Americans of every era, for its principles are enduring ones. One of the fundamental aspects of our liberty as free men is the privacy of our innermost thoughts, attitudes, and beliefs: this includes not only our freedom to express them as we please, but the freedom from

any form of governmental coercion to reveal them. Another aspect is the constitutional protection against self-incrimination for civil servants as well as for criminals and others.

In its report on the bill, the committee stated:

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

No one should be deluded that this bill is a panacea for all the ills besetting the Federal service, all of the invasions of privacy, all of the violations of basic due process principles.

There are many areas left untouched, as the subcommittee daily mail will show. Passage of the bill will correct some violations, and provide some recourses against violations. But more importantly, it will establish a precedent in this area of the law and create a climate for decisionmaking in the executive branch.

The zealous men, the unthinking, careless, hurried, impatient, pressured, or misinformed men will still make unreasonable or illegal decisions. We cannot legislate against all manner of fools or their follies. Where their decisions affect the liberties of the citizens, we can only provide the basic standards by which they can be controlled. For the conscientious administrator anxious to do his job well, achieving the maximum benefit for Government and observing individual rights at the same time, the bill provides a uniform guide. He will not need to sit and ponder whether to follow his conscience or an illegal order or whether or not to utilize a questionable scientific method.

The law will state clearly what his own rights and duties are in certain areas. By the same token, it assures the rights of the individual employee and applicant.

I confess that were I legislating alone, I would rather see fewer compromises and exceptions than are now contained in the bill. I see no necessity for any of the practices prohibited in S. 782.

Unfortunately, some people, both in Government and out, have not yet been alerted to the dangers posed by these policies and practices. For them, the symbolic act or the technique—the means—still triumph over purpose, however unrelated the two.

A threefold need for this bill is outlined in the committee report.

The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those citizens who now work for Government and those who will work for it

in the future. The bill not only remedies problems of today but looks to the future in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees, and to retain them with the assurance that they will be treated fairly and as people of honesty and integrity.

Third, is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations, and practices on those of State and local government and of private business and industry.

The Civil Service Commission has made a good-faith effort to eliminate some of the privacy-invading practices of the Federal Government. Also, as a result of complaints which the subcommittee has sent to the Civil Service Commission, some individual grievances have been remedied.

But while isolated cases of injustice may be corrected by congressional intervention, they do not, as with judicial decisions on the rights of criminals, establish a precedent for protecting rights of all employees. There are vast numbers of Federal agencies with decentralized personnel systems, responsive in different ways to policy directives. In some cases, they lack any control at all by Congress, the President, the Civil Service Commission, or in some instances, even by the head of the department or agency. They are, in effect beyond the reach of the law.

The reply of some in the executive branch has been that Government employment is a privilege, and if the individual does not like his treatment, he can quit.

The Association of the Bar of the City of New York has a reply to this. Their report on the bill states:

The Ervin bill recognizes the existence of some serious shortcomings in the behavior of the Executive Branch of the Federal Government as an employer. There are today almost three million persons employed by the Federal Government and the number can be expected to grow. It is not possible, therefore, to deal with the problem within the narrow framework of an employee's option to quit his employment if the conditions are not to his taste.

Employment by the Federal Government should not be regarded as a privilege to be withheld or conditioned as the Government sees fit. Indeed, there is an obligation on the part of the Federal Government to have more than the usual respect for rights of privacy.

It is already a late date for the Federal Government to begin showing respect for the rights of privacy. But the Senate has taken the first step today by passing S. 782.

I ask unanimous consent to insert at this point in the RECORD an excerpt from the Judiciary Committee report on the bill—Senate Report No. 873, pages 7 through 10, and pages 12 through 48. This contains the legislative history of the bill and a section-by-section analysis. There being no objection, the excerpt

was ordered to be printed in the RECORD, as follows:

SENATE REPORT NO. 873, 91ST CONGRESS, SECOND SESSION; PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

LEGISLATIVE HISTORY

Violations of rights covered by the bill as well as other areas of employee rights have been the subject of intensive hearings and investigation by the subcommittee for the last five Congresses.

In addition to investigation of individual cases, the Subcommittee on Constitutional Rights has conducted annual surveys of agency policies on numerous aspects of Government personnel practices. In 1965, pursuant to Senate Resolution 43, hearings were conducted on due process and improper use of information acquired through psychological testing, psychiatric examinations, and security and personnel interviews.

In a letter to the Chief Executive on August 3, 1966 the subcommittee chairman stated:

"For some time, the Constitutional Rights Subcommittee has received disturbing reports from responsible sources concerning violations of the rights of Federal employees. I have attempted to direct the attention of appropriate officials to these matters, and although replies have been uniformly courteous, the subcommittee has received no satisfaction whatsoever, or even any indication of awareness that any problem exists. The invasions of privacy have reached such alarming proportions and are assuming such varied forms that the matter demands your immediate and personal attention.

"The misuse of privacy-invading personality tests for personnel purposes has already been the subject of hearings by the subcommittee. Other matters, such as improper and insulting questioning during background investigations and due process guarantees in denial of security clearances have also been the subject of study. Other employee complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; race questionnaires; restrictions on communicating with Congress; pressure to support political parties yet restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activities yet administrative influence to participate in agency-approved functions; rules for writing, speaking and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families."

After describing in detail the operation of two current programs to illustrate the problems, Senator Ervin commented:

"Many of the practices now in extensive use have little or nothing to do with an individual's ability or his qualification to perform a job. The Civil Service Commission has established rules and examinations to determine the qualifications of applicants. Apparently, the Civil Service Commission and the agencies are failing in their assignment to operate a merit system for our Federal civil service.

"It would seem in the interest of the administration to make an immediate review of these practices and questionnaires to determine whether the scope of the programs is not exceeding your original intent and whether the violations of employee rights are not more harmful to your long-range goals than the personnel shortcuts involved."

Following this letter and others addressed to the Chairman of the Civil Service Commission and the Secretaries of other departments, legislation to protect employee rights was introduced in the Senate.

S. 1035 was preceded by S. 3703 and S. 3779 in the second session of the 89th Congress. S. 3703 was introduced by the chairman on August 9, 1966, and referred to the Judiciary

Committee. On August 25, 1966, the chairman received unanimous consent to a request to add the names of 33 cosponsors to the bill. On August 26, 1966, he introduced a bill similar to S. 3703, containing an amendment reducing the criminal penalties provided in section 2. This bill, S. 3779, was also referred to the Judiciary Committee, and both S. 3703 and S. 3779 were then referred to the Subcommittee on Constitutional Rights.

Comments on the bill and on problems related to it were made by the chairman in the Senate on July 18, August 9, August 25, August 26, September 29, October 17 and 18, 1966, and on February 21, 1967.¹

Hearings on S. 3779 were conducted before the subcommittee on September 23, 29, 30, and October 3, 4, and 5, 1966. Reporting to the Senate on these hearings, the subcommittee chairman made the following statement:

"The recent hearings on S. 3779 showed that every major employee organization and union, thousands of individual employees who have written Congress, law professors, the American Civil Liberties Union, and a number of bar associations agree on the need for statutory protections such as those in this measure.

"We often find that as the saying goes 'things are never as bad as we think they are,' but in this case, the hearings show that privacy invasions are worse than we thought they were. Case after case of intimidation, of threats of loss of job or security clearance were brought to our attention in connection with bond sales, and Government charity drives.

"Case after case was cited of privacy invasion and denial of due process in connection with the new financial disclosure requirements. A typical case is the attorney threatened with disciplinary action or loss of his job because he is both unable and unwilling to list all gifts, including Christmas presents from his family, which he had received in the past year. He felt this had nothing to do with his job. There was the supervisory engineer who was told by the personnel officer that he would have to take disciplinary action against the 25 professional employees in his division who resented being forced to disclose the creditors and financial interests of themselves and members of their families. Yet there are no procedures for appealing the decisions of supervisors and personnel officers who are acting under the Commission's directive. These are not isolated instances; rather, they represent a pattern of privacy invasion reported from almost every State.

"The subcommittee was told that supervisors are ordered to supply names of employees who attend PTA meetings and engage in Great Books discussions. Under one department's regulations, employees are requested to participate in specific community activities promoting local and Federal antipoverty, beautification, and equal employment programs; they are told to lobby in local city councils for fair housing ordinances, to go out and make speeches on any number of subjects, to supply flower and grass seed for beautification projects, and to paint other people's houses. When these regulations were brought to the subcommittee's attention several weeks ago, we were told that they were in draft form. Yet, we then discovered they had already been implemented and employees whose official duties had nothing to do with such programs were being informed that failure to participate would indicate an uncooperative attitude and would be reflected in their efficiency records.

"The subcommittee hearings have produced ample evidence of the outright intimidation, arm twisting and more subtle forms of coercion which result when a superior is

¹ See also, Cong. Rec. Comments.

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requested to obtain employee participation in a program. We have seen this in the operation of the bond sale campaign, the drives for charitable contributions, and the use of self-identification minority status questionnaires. We have seen it in the sanctioning of polygraphs, personality tests, and improper questioning of applicants for employment.

"In view of some of the current practices reported by employee organizations and unions, it seems those who endorse these techniques for mind probing and thought control of employees have sworn hostility against the idea that every man has a right to be free of every form of tyranny over his mind; they forget that to be free a man must have the right to think foolish thoughts as well as wise ones. They forget that the first amendment implies the right to remain silent as well as the right to speak freely—the right to do nothing as well as the right to help implement lofty ideals.

"It is not under this administration alone that there has been a failure to respect employee rights in a zeal to obtain certain goals. While some of the problems are new, others have been prevalent for many years with little or no administrative action taken to attempt to ameliorate them. Despite congressional concern, administrative officials have failed to discern patterns of practice in denial of rights. They seem to think that if they can belatedly remedy one case which is brought to the attention of the Congress, the public and the press, that this is enough—that the 'heat' will subside. With glittering generalities, qualified until they mean nothing in substance, they have sought to throw Congress off the track in its pursuit of permanent corrective action. We have seen this in the case of personality testing, in the use of polygraphs, and all the practices which S. 3779 would prohibit.

"The Chairman of the Civil Service Commission informed the subcommittee that there is no need for a law to protect employee rights. He believes the answer is 'to permit executive branch management and executive branch employees as individuals and through their unions, to work together to resolve these issues as part of their normal discourse.'

"It is quite clear from the fearful tenor of the letters and telephone calls received by the subcommittee and Members of Congress that there is no discourse and is not likely to be any discourse on these matters between the Commission and employees. Furthermore, there are many who do not even fall within the Commission's jurisdiction. For them, there is no appeal but to Congress.

"As for the argument that the discourse between the unions and the Commission will remedy the wrongs, the testimony of the union representatives adequately demolishes that dream.

"The typical attitude of those responsible for personnel management is reflected in Mr. Macy's answer that there may be instances where policy is not adhered to, but 'There is always someone who doesn't get the word.' Corrective administration action, he says, is fully adequate to protect employee rights.

"Administrative action is not sufficient. Furthermore, in the majority of complaints, the wrong actually stems from the stated policy of the agency or the Commission. How can these people be expected to judge objectively the reasonableness and constitutionality of their own policies? This is the role of Congress, and in my opinion, Congress has waited too long as it is to provide the guidance that is desperately needed in these matters."

S. 1035, 90th Congress

On the basis of the subcommittee hearings, agency reports, and the suggestions of many experts, the bill was amended to meet legitimate objections to the scope and language raised by administrative witnesses and to clarify the intent of its cosponsors that

it does not apply to the proper exercise of management authority and supervisory discretion, or to matters now governed by statute.

This amended version of S. 3779 was introduced in the Senate by the chairman on February 21, 1967, as S. 1035 with 54 cosponsors. It was considered by the Constitutional Rights Subcommittee and unanimously reported with amendments, by the Judiciary Committee on August 21, 1967. [S. Rept. No. 534, 90th Cong., 1st Sess.] The proposal was considered by the Senate on September 19, 1967, and approved, with floor amendments, by a 79 to 4 vote. After absentee approvals were recorded, the record showed a total of 99 Members supported passage of the bill. The amendments adopted on the Senate floor deleted a complete exemption which the committee bill provided for the Federal Bureau of Investigation; instead, it was provided that the Federal Bureau of Investigation should be accorded the same limited exemptions provided for the Central Intelligence Agency and the National Security Agency. A provision was added to allow the three Directors to delegate the power to make certain personal findings required by section 6 of the bill.

Comparison of S. 1035, 90th Congress, as introduced, and S. 3779, 89th Congress

As introduced, the revised bill, S. 1035, differed from S. 3779 of the 89th Congress in the following respects:

1. The section banning requirements to disclose race, religion, or national origin was amended to permit inquiry on citizenship where it is a statutory condition of employment.

2. The provision against coercion of employees to buy bonds or make charitable donations was amended to make it clear that it does not prohibit calling meetings or taking any action appropriate to afford the employee the opportunity voluntarily to invest or donate.

3. A new section providing for administrative remedies and penalties established a Board on Employee Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties. There is judicial review of the decision under the Administrative Procedure Act.

4. A specific exemption for the Federal Bureau of Investigation is included.

5. Exceptions to the prohibitions on privacy-invasive questions by examination, interrogations, and psychological tests are provided upon psychiatric determination that the information is necessary in the diagnosis and treatment of mental illness in individual cases, and provided that it is not elicited pursuant to general practice or regulation governing the examination of employees or applicants on the basis of grade, job, or agency.

6. The section prohibiting requirements to disclose personal financial information contains technical amendments to assure that only persons with final authority in certain areas may be subject to disclosure requirements.

7. For those employees excluded from the ban on disclosure requirements, a new section (j), provides that they may only be required to disclose items tending to show a conflict of interest.

8. Military supervisors of civilian employees are included within the prohibitions of the bill, and violation of the act is made a punishable offense under the Uniform Code of Military Justice.

9. A new section 2 has been added to assure that the same prohibitions in section 1 on actions of department and agency officials with respect to employees in their departments and agencies apply alike to officers of the Civil Service Commission with respect

to the employees and applicants with whom they deal.

10. Section (b) of S. 3779, relating to the calling or holding of meetings or lectures to indoctrinate employees, was deleted.

11. Sections (c), (d), and (e) of S. 3779—sections (b), (c), and (d) of S. 1035—containing prohibitions on requiring attendance at outside meetings, reports on personal activities and participation in outside activities, were amended to make it clear that they do not apply to the performance of official duties or to the development of skill, knowledge, and abilities which qualify the person for his duties or to participation in professional groups or associations.

12. The criminal penalties were reduced from a maximum of \$500 and 6 months' imprisonment to \$300 and 30 days.

13. Section (h) of S. 3779 prohibiting requirements to support candidates, programs, or policies of any political party was revised to prohibit requirements to support the nomination or election of persons or to attend meetings to promote or support activities or undertakings of any political party.

14. Other amendments of a technical nature.

QUESTIONS ON RACE, RELIGION, AND NATIONAL ORIGIN

Many complaints received by the subcommittee concerned official requests or requirements that employees disclose their race, religion, or ethnic or national origin. This information has been obtained from employees through the systematic use of questionnaires or oral inquiries by supervisors.

Chief concern has focused on a policy inaugurated by the Civil Service Commission in 1966, under which present employees and future employees would be asked to indicate on a questionnaire whether they were "American Indian," "oriental," "Negro," "Spanish-American" or "none of these." Approximately 1.7 million employees were told to complete the forms, while some agencies including some in the Department of Defense continued their former practice of acquiring such information through the "head count" method. Although the Civil Service Commission directive stated that disclosure of such information was voluntary, complaints show that employees and supervisors generally felt it to be mandatory. Administrative efforts to obtain compliance included in some instances harassment, threats, and intimidation. Complaints in different agencies showed that employees who did not comply received airmail letters at their homes with new forms; or their names were placed on administrative lists for "followup" procedures, and supervisors were advised to obtain the information from delinquent employees by a certain date.

In the view of John McCart, representing the Government Employees' Council, AFL-CIO:

"When the Civil Service Commission and the regulations note that participation by the employee will be voluntary, this removes some of the onus of the encroachment on an individual's privacy. But in an organizational operation of the size and complexity of the Federal Government, it is just impossible to guarantee that each individual's right to privacy and confidentiality will be observed.

"In addition to that, there have been a large number of complaints from all kinds of Federal employees. In the interest of maintaining the rights of individual workers against the possibility of invading those rights, it would seem to us it would be better to abandon the present approach, because there are other alternatives available for determining whether that program is being carried out."

The hearing record contains numerous examples of disruption of employee-management relations, and of employee dissatisfaction with such official inquiries. Many told the subcommittee that they refused to complete the questionnaires because the matter

was none of the Government's business; others, because of their mixed parentage, felt unable to state the information.

Since 1963, the policy of the American Civil Liberties Union on the method of collecting information about race has favored the head count wherever possible. Although the policy is presently under review, the subcommittee finds merit in the statement that:

"The collection and dissemination of information about race creates a conflict among severally equally important civil liberties: the right of free speech and free inquiry, on the one hand, and the rights of privacy and of equality of treatment and of opportunity, on the other. The ACLU approves them all. But at this time in human history, when the principle of equality and nondiscrimination must be vigorously defended, it is necessary that the union oppose collection and dissemination of information regarding race, except only where rigorous justification is shown for such action. Where such collection and dissemination is shown to be justified, the gathering of information should be kept to the most limited form, wherever possible by use of the head count method, and the confidential nature of original records should be protected as far as possible."

Former Civil Service Commission Chairman Robert Ramspeck told the subcommittee:

"To consider race, color, religion, and national origin in making appointments, in promotions and retention of Federal employees is, in my opinion, contrary to the merit system. There should be no discrimination for or against minority persons in Federal Government employment."

As the hearings and complaints have demonstrated, the most telling argument against the use of such a questionnaire, other than the constitutional issue, is the fact that it does not work. This is shown by the admission by many employees that they either did not complete the forms or that they gave inaccurate data.

Mr. Macy informed the subcommittee:

"In the State of Hawaii the entire program was cut out because it had not been done there before, and it was inadvertently included in this one, and the feeling was that because of the racial composition there it would be exceedingly difficult to come up with any kind of identification along the lines of the card that we were distributing."

The Civil Service Commission on May 9 informed the subcommittee that it had "recently approved regulations which will end the use of voluntary self-identification of race as a means of obtaining minority group statistics for the Federal work force." The Commission indicated its decision was based on the failure of the program to produce meaningful statistics. In its place the Commission will rely on supervisory reports based solely on observation, which would not be prohibited by the bill.

As Senator Fong stated:

"It should be noted that the bill would not bar head counts of employee racial extraction for statistical purposes by supervisors. However, the Congress has authorized the merit system for the Federal service and the race, national origin or religion of the individual or his forebears should have nothing to do with his ability or qualifications to do a job."

Section 1(a) of the bill was included to assure that employees will not again be subjected to such unwarranted invasion of their privacy. It is designed to protect the merit system which Congress has authorized for the Federal service. Its passage will reaffirm the intent of Congress that a person's religion, race, and national or ethnic origin or that of his forebears have nothing to do with his ability or qualification to perform the requisite duties of a Federal position, or to qualify for a promotion.

By eliminating official authority to place the employee in a position in which he feels compelled to disclose this personal data, the bill will help to eliminate the basis for such complaints of invasion of privacy and discrimination as Congress has received for a number of years. It will protect Americans from the dilemma of the grandson of an American Indian who told the subcommittee that he had exercised his option and did not complete the minority status questionnaire. He did not know how to fill it out. Shortly thereafter he received a personal memorandum from his supervisor "requesting" him to complete a new questionnaire and "return it immediately." He wrote: "I personally feel that if I do not comply with this request (order), my job or any promotion which comes up could be in jeopardy."

The prohibitions in section 1(a) against official inquiries about religion, and in section 1(e) concerning religious beliefs and practices together constitute a bulwark to protect the individual's right to silence concerning his religious convictions and to refrain from an indication of his religious beliefs.

Referring to these two sections, Lawrence Speiser, director of the Washington office of the American Civil Liberties Union testified:

"These provisions would help, we hope, eliminate a constantly recurring problem involving those new Government employees who prefer to affirm their allegiance rather than swearing to it. All Government employees must sign an appointment affidavit and take an oath or affirmation of office."

"A problem arises not just when new employees enter Government employment but in all situations where the Government requires an oath, and there is an attempt made on the part of those who prefer to affirm. It is amazing the intransigence that arises on the part of clerks or those who require the filling out of these forms, or the giving of the statement in permitting individuals to affirm."

"The excuses that are made vary tremendously, either that the form can only be signed and they cannot accept a form in which 'so help me God' is struck out, because that is an amendment, and they are bound by their instructions which do not permit any changes to be made on the forms at all."

"Also, in connection with the giving of oaths, I have had one case in which an investigator asked a young man this question: 'For the purposes of administering the oath, do you believe in God?'"

"It is to be hoped that the provisions of this bill would bar practices of that kind. The law should be clear at this time. Title I, United States Code, section 1 has a number of rules of construction, one of which says that wherever the word 'oath' appears, that includes 'affirmation,' and wherever the word 'swear' appears, that includes 'affirm.'"

"This issue comes up sometimes when clerks will ask, 'Why do you want to affirm? Do you belong to a religious group that requires an affirmation rather than taking an oath?' And unless the individual gives the right answer, the clerks won't let him affirm. It is clear under the *Torasco* case that religious beliefs and lack of religious beliefs are equally entitled to the protection of the first amendment."

The objection has been raised that the prohibition against inquiries into race, religion, or national origin would hinder investigation of discrimination complaints. In effect, however, it is expected to aid rather than hinder in this area of the law, by decreasing the opportunities for discrimination initially. It does not hinder acquisition of the information elsewhere; nor does it prevent a person from volunteering the information if he wishes to supply it in filing a complaint or in the course of an investigation.

CONTROL OF EMPLOYEE OPINIONS, OUTSIDE ACTIVITIES

Reports have come to the subcommittee of infringements and threatened infringements on first amendment freedoms of employees: freedom to think for themselves free of Government indoctrination; freedom to choose their outside civic, social, and political activities as citizens free of official guidance; or even freedom to refuse to participate at all without reporting to supervisors.

Illustrative of the climate of surveillance the subcommittee has found was a 13-year-old Navy Department directive, reportedly similar to those in other agencies, warning employees to guard against "Indiscreet remarks" and to seek "wise and mature" counsel within their agencies before joining civic or political associations.

In the view of the United Federation of Postal Clerks:

"Perhaps no other right is so essential to employee morale as the right to personal freedom and the absence of interference by the Government in the private lives and activities of its employees. Attempts to place prohibitions on the private associations of employees; mandatory reporting of social contacts with Members of Congress and the press; attempts to 'orient' or 'indoctrinate' Federal employees on subjects outside their immediate areas of professional interest; attempts to 'encourage' participation in outside activities or discourage patronage of selected business establishments and coercive campaigns for charitable donations are among the most noteworthy abuses of Federal employees' right to personal freedom."

An example of improper on-the-job indoctrination of employees about sociological and political matters was cited in his testimony by John Griner, president of the AFL-CIO affiliated American Federation of Government Employees:

"One instance of disregard of individual rights of employees as well as responsibility to the taxpayers, which has come to my attention, seems to illustrate the objectives of subsections (b), (c), and (d), of section 1 of the Ervin bill. It happened at a large field installation under the Department of Defense."

"The office chief called meetings of different groups of employees throughout the day * * *. A recording was played while employees listened about 30 minutes. It was supposedly a speech made at a university, which went deeply into the importance of integration of the races in this country. There was discussion of the United Nations—what a great thing it was—and how there never could be another world war. The person who reported this incident made this comment: 'Think of the taxpayers' money used that day to hear that record.' I think that speaks for itself."

Other witnesses were in agreement with Mr. Griner's view on the need for protecting employees now and in the future from any form of indoctrination on issues unrelated to their work. The issue was defined at hearings on S. 3779 in the following colloquy between the subcommittee chairman and Mr. Griner:

"If they are permitted to hold sessions such as this on Government time and at Government expense, they might then also hold sessions as to whether or not we should be involved in the Vietnam war or whether we should not be, whether we should pull out or whether we should stay, and I think it could go to any extreme under these conditions."

"Of course, we are concerned with it, yes. But that is not a matter for the daily routine of work."

"Senator Ervin. Can you think of anything which has more direful implications for a free America than a practice by which a government would attempt to indoctrinate

any man with respect to a particular view on any subject other than the proper performance of his work?

"Mr. GRINER. I think if we attempted to do that we would be violating the individual's constitutional rights.

"Senator ERVIN. Is there any reason whatever why a Federal civil service employee should not have the same right to have his freedom of thought on all things under the sun outside of the restricted sphere of the proper performance of his work than any other American enjoys?

"Mr. GRINER. No, sir."

With one complaint of attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

Concerning such a practice, one witness commented: "If I had been a Federal employee and I cared anything about my job, I would have been at that lecture."

Employees of an installation in Pennsylvania complained of requirements to attend film lectures on issues of the cold war.

Witnesses agreed that taking notice of attendance at such meetings constituted a form of coercion to attend. Section 1(b) will eliminate such intimidation. It leaves unaffected existing authority to use any appropriate means, including publicity, to provide employees information about meetings concerning matters such as charity drives and bond-selling campaigns.

Section (c) protects a basic constitutional right of the individual employee to be free of official pressure on him to engage in any civic or political activity or undertaking which might involve him as a private citizen, but which has no relation to his Federal employment. It preserves his freedom of thought and expression, including his right to keep silent, or to remain inactive.

This section will place a statutory bar against the recurrence of employee complaints such as the following received by a Member of the Senate:

"Dear Senator—: On —, 1966, a group of Treasury Department administrators were called to Miami for a conference led by —, Treasury Personnel Officer, with regard to new revisions in chapter 713 of the Treasury Personnel Manual."

Over the years the Treasury Department has placed special emphasis on the hiring of Negroes under the equal employment opportunity program, and considerable progress in that regard has been made. However, the emphasis of the present conferences was that our efforts in the field of equal employment opportunity have not been sufficient. Under the leadership of President Johnson and based on his strong statement with regard to the need for direct action to cure the basic causes leading to discrimination, the Treasury Department has now issued specific instructions requiring all supervisors and line managers to become actively and aggressively involved in the total civil rights problem.

The requirements laid down by chapter 713 and its appendix include participation in such groups as the Urban League, NAACP, et cetera (these are named specifically) and involvement in the total community action program, including open housing, integration of schools, et cetera.

The policies laid down in this regulation, as verbally explained by the Treasury representatives at the conference, go far beyond any concept of employee personnel responsibility previously expressed. In essence, this regulation requiring every Treasury manager or supervisor to become a social worker, both during his official hours and on his own

time. This was only tangentially referred to in the regulation and its appendages, but was brought out forcefully in verbal statements by Mr. — and —. Frankly, this is tremendously disturbing to me and to many of the other persons with whom I have discussed the matter. We do not deny the need for strong action in the field of civil rights, but we do sincerely question the authority of our Government to lay out requirements to be met on our own time which are repugnant to our personal beliefs and desires.

The question was asked as to what disciplinary measures would be taken against individuals declining to participate in these community action programs. The reply was given by the equal employment officer, that such refusal would constitute an undesirable work attitude bordering on insubordination and should at the very least be reflected in the annual efficiency rating of the employee.

The principles expressed in these regulations and in this conference strike me as being of highly dangerous potential. If we, who have no connection with welfare or social programs, can be required to take time from our full-time responsibilities in our particular agencies and from the hours normally reserved for our own refreshment and recreation to work toward integration of white neighborhoods, integration of schools by artificial means, and to train Negroes who have not availed themselves of the public schooling available, then it would seem quite possible that under other leadership, we could be required to perform other actions which would actually be detrimental to the interests of our Nation.

Testifying on the issue of reporting outside activities, the American Civil Liberties Union representative commented:

"To the extent that individuals are apprehensive they are going to have to, at some future time, tell the Government about what organizations they have belonged to or been associated with, that is going to inhibit them in their willingness to explore all kinds of ideas, their willingness to hear speakers, their willingness to do all kinds of things. That has almost as deadening an effect on free speech in a democracy as if the opportunities were actually cut off.

"The feeling of inhibition which these kinds of questions cause is as dangerous, it seems to me, as if the Government were making actual edicts."

Witnesses gave other examples of invasion of employees' private lives which would be halted by passage of the bill.

In the southwest a division chief dispatched a buck slip to his group supervisors demanding: "The names * * * of employees * * * who are participating in any activities including such things as: PTA in integrated schools, sports activities which are inter-social, and such things as Great Books discussion groups which have integrated memberships."

In a Washington office of the Department of Defense, a branch chief by telephone asked supervisors to obtain from employees the names of any organizations they belonged to. The purpose apparently was to obtain invitations for Federal Government officials to speak before such organizations.

Reports have come to the subcommittee that the Federal Maritime Commission, pursuant to civil service regulations, requested employees to participate in community activities to improve the employability of minority groups, and to report to the chairman any outside activities.

In addition to such directives, many other instances involving this type of restriction have come to the attention of the subcom-

mittee over a period of years. For example, some agencies have either prohibited flatly, or required employees to report, all contacts, social or otherwise, with Members of Congress or congressional staff members. In many cases reported to the subcommittee, officials have taken reprisals against employees who communicated with their Congressmen and have issued directives threatening such action.

The Civil Service Commission on its Form 85 for nonsensitive positions requires an individual to list: "Organizations with which affiliated (past and present) other than religious or political organizations or those with religious or political affiliations (if none, so state)."

PRIVACY INVASIONS IN INTERVIEWS, INTERROGATIONS, AND PERSONALITY TESTS

Although it does not outlaw all of the unwarranted personal prying to which employees and applicants are now subjected, section 1(e) of the reported bill will prohibit the more serious invasions of personal privacy reported. The subcommittee believes it will also result in limitations beyond its specific prohibitions by encouraging administrative adherence to the principles it reflects.

It will halt mass programs in which, as a general rule, agency officials conduct interviews during which they require or request applicants or employees to reveal intimate details about their habits, thoughts, and attitudes on matters unrelated to their qualifications and ability to perform a job.

It will also halt individual interrogations such as that involving an 18-year-old college sophomore applying for a summer job as secretary at a Federal department.

In the course of an interview with a department investigator, she was asked wide-ranging personal questions. For instance, regarding a boy whom she was dating, she was asked questions which denoted assumptions made by the investigator, such as:

Did he abuse you?

Did he do anything unnatural with you? You didn't get pregnant, did you?

There's kissing, petting, and intercourse, and after that, did he force you to do anything to him, or did he do anything to you?

The parent of this student wrote:

"This interview greatly transcended the bounds of normal areas and many probing personal questions were propounded. Most questions were leading and either a negative or positive answer results in an appearance of self-incrimination. During this experience, my husband was on an unaccompanied tour of duty in Korea and I attempted alone, without success, to do battle with the Department.

"I called and was denied any opportunity to review what had been recorded in my daughter's file. Likewise my daughter was denied any review of the file in order to verify or refute any of the record made by the State Department interviewer. This entire matter was handled as if applicants for State Department employment must subject themselves to the personal and intimate questions and abdicate all claims to personal rights and privileges.

"As a result of this improper intrusion into my daughter's privacy which caused all great mental anguish, I had her application for employment withdrawn from the State Department. This loss of income made her college education that much more difficult.

"Upon my husband's return, we discussed this entire situation and felt rather than subjecting her again to the sanctioned methods of Government investigation we would have her work for private industry. This she did in the summer of 1966, with great success and without embarrassing or humiliating Gestapo-type investigation."

Upon subcommittee investigation of this

case, the Department indicated that this was not a unique case, because it used a "uniform policy in handling the applications of summer employees as followed with all other applicant categories." It stated that its procedure under Executive Order 10450 is a basic one "used by the Department and other executive agencies concerning the processing of any category of applicants who will be dealing with sensitive, classified material." Its only other comment on the case was to assure that "any information developed during the course of any of our investigations that is of a medical nature, is referred to our Medical Division for proper evaluation and judgment." In response to a request for copies of departmental guidelines governing such investigations and interviews, the subcommittee was told they were classified.

Section 1(e) would protect every employee and every civilian who offers his services to his Government from indiscriminate and unauthorized requests to submit to any test designed to elicit such information as the following:

My sex life is satisfactory.
I have never been in trouble because of my sex behavior.
Everything is turning out just like the prophets of the Bible said it would.
I loved my father.
I am very strongly attracted by members of my own sex.
I go to church almost every week.
I believe in the second coming of Christ.
I believe in a life hereafter.
I have never indulged in any unusual sex practices.
I am worried about sex matters.
I am very religious (more than most people).
I loved my mother.
I believe there is a Devil and a Hell in afterlife.
I believe there is a God.
Once in a while I feel hate toward members of my family whom I usually love.
I wish I were not bothered by thoughts about sex.

The subcommittee hearings in 1965 on "Psychological tests and constitutional rights" and its subsequent investigations support the need for such statutory prohibitions on the use of tests.

In another case, the subcommittee was told, a woman was questioned for 6 hours "about every aspect of her sex life—real, imagined, and gossiped—with an intensity that could only have been the product of inordinate salacious minds."

The specific limitation on the three areas of questioning proscribed in S. 1035 in no way is intended as a grant of authority to continue or initiate the official eliciting of personal data from individuals on subjects not directly proscribed. It would prohibit investigators, or personnel, security and medical specialists from indiscriminately requiring or requesting the individual to supply, orally or through tests, data on religion, family, or sex. It does not prevent a physician from doing so if he has reason to believe the employee is "suffering from mental illness" and believes the information is necessary to make a diagnosis. Such a standard is stricter than the board "fitness for duty" standard now generally applied by psychiatrists and physicians in the interviews and testing which an employee can be requested and required to undergo.

There is nothing in this section to prohibit an official from advising an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge voluntarily.

POLYGRAPHS

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority to require or request or attempt to require or request any civilian employee or any appli-

cant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate the use of so-called lie detectors by Government, it assures that where such devices are used for these purposes it will be only in limited areas.

John McCart, representing the Government Employees Council of AFL-CIO, supported this section of the bill, citing a 1965 report by a special subcommittee of the AFL-CIO executive council that:

"The use of lie detectors violates basic considerations of human dignity in that they involve the invasion of privacy, self-incrimination, and the concept of guilt until proven innocent."

Congressional investigation² has shown that there is no scientific validation for the effectiveness or accuracy of lie detectors. Yet despite this and the invasion of privacy involved, lie detectors are being used or may be used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations.

This section of the bill is based on complaints such as the following received by the subcommittee:

"When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.

"About one month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the District line in Maryland. I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—

"When was the first time you had sexual relations with a woman?

"How many times have you had sexual intercourse?

"Have you ever engaged in homosexual activities?

"Have you ever engaged in sexual activities with an animal?

"When was the first time you had intercourse with your wife?

"Did you have intercourse with her before you were married? How many times?"

"He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could get away with asking a girl those kind of questions.

"When I was finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests."

Commenting on this complaint, the subcommittee chairman observed:

"Certainly such practices should not be tolerated even by agencies charged with security missions. Surely, the financial, scientific, and investigative resources of the Federal

Government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning. The Federal Bureau of Investigation does not use personality tests or polygraphs on applicants for employment. I fail to see why the National Security Agency finds them so fascinating."

COERCION TO BUY BONDS AND CONTRIBUTE TO CAUSES

The hearing record and subcommittee complaint files amply document the need for statutory protections against all forms of coercion of employees to buy bonds and contribute to causes. Involved here is the freedom of the individual to invest and donate his money as he sees fit, without official coercion. As the subcommittee chairman explained:

"It certainly seems to me that each Federal employee, like any other citizen in the United States, is the best judge of his capacity, in the light of his financial obligations, to participate or decide whether he will participate and the extent of his participation in a bond drive. That is a basic determination which he and he alone should make.

"I think there is an interference with fundamental rights when coercion of a psychological or economic nature is brought on a Federal employee, even to make him do right. I think a man has to have a choice of acting unwisely as well as wisely, if he is going to have any freedom at all."

The subcommittee has received from employees and their organizations numerous reports of intimidation, threats of loss of job, and security clearances and of denial of promotion for employees who do not participate to the extent supervisors wish. The hearing record contains examples of documented cases of reprisals, many of which have been investigated at the subcommittee's request and confirmed by the agency involved. It is apparent that policy statements and administrative rules are not sufficient to protect individuals from such coercion.

The president of the United Federation of Postal Clerks informed the subcommittee:

"Section 1, paragraph (1) of S. 3779 is particularly important to all Federal employees and certainly to our postal clerks. The extreme arm-twisting coercion, and pressure tactics exerted by some postmasters on our members earlier this year during the savings bond drive must not be permitted at any future time in the Government-service.

"Our union received complaints from all over the country where low paid postal clerks, most having the almost impossible problem of trying to support a family and exist on substandard wages, were practically being ordered to sign up for purchase of U.S. savings bonds, or else. The patriotism of our postal employees cannot be challenged. I recently was advised that almost 75 percent of postal workers are veterans of the Armed Forces and have proven their loyalty and patriotism to this great country of ours in the battlefield in many wars. Yet, some postmasters questioned this patriotism and loyalty if any employee could not afford to purchase a savings bond during the drive."

The president of the National Association of Government Employees testified:

"We are aware of instances wherein employees were told that if they failed to participate in the bond program they would be frozen in their position without promotional opportunities.

"In another agency the names of individuals who did not participate were posted for all to see. We have been made aware of this situation for some years and we know that Congress has been advised of the many instances and injustices Federal employees faced concerning their refusal or inability to purchase bonds.

"Certainly, the Government, which has

² Hearings and reports on the use of polygraphs as "lie detectors," by the Federal Government before a Subcommittee of the House Committee on Government Operations, April 1964 through 1966.

thousands of public relations men in its agencies and departments, should be capable of promoting a bond program that does not include the sledge-hammer approach."

Some concern has been expressed by officials of the United Community Funds and Councils of America, the American Heart Association Inc., and other charitable organizations, that the bill would hamper their campaigns in Federal agencies.

For this reason, the bill contains a proviso to express the intent of the sponsors that officials may still schedule meetings and take any appropriate action to publicize campaigns and to afford employees the opportunity to invest or donate their money voluntarily. It is felt that this section leaves a wide scope for reasonable action in promoting bond selling and charity drives.

The bill will prohibit such practices as were reported to the subcommittee in the following complaints:

"We have not yet sold our former home and cannot afford to buy bonds while we have both mortgage payments and rental payments to meet. Yet I have been forced to buy bonds, as I was told the policy at this base is, 'Buy bonds or Bye Bye.'"

"In short, after moving 1,700 miles for the good of the Government, I was told I would be fired if I didn't invest my money as my employer directed. I cannot afford to buy bonds, but I can't afford to be fired even more.

"Not only were we forced to buy bonds, but our superiors stood by the time clock with the blanks for the United Givers Fund, and refused to let us leave until we signed up. I am afraid to sign my name, but I am employed at * * *."

A representative of the 14th District Department of the American Federation of Government Employees, Lodge 421 reported:

"The case of a GS-13 professional employee who has had the misfortune this past year of underwriting the expenses incurred by the last illness and death of both his mother and father just prior to this recent bond drive. This employee had been unofficially informed by his supervisor that he had been selected for a then existing GS-14 vacancy. When it became known that he was declining to increase his participation in the savings bond drive by increasing his payroll deduction for that purpose, he was informed that he might as well, in effect, kiss that grade 14 goodbye."

DISCLOSURE OF ASSETS, DEBTS, AND PROPERTY

Sections (i) and (j) meet a need for imposing a reasonable statutory limitation on the extent to which an employee must reveal the details of his or his family's personal finances, debts, or ownership of property.

The subcommittee believes that the conflict-of-interest statutes, and the many other laws governing conduct of employees, together with appropriate implementing regulations, are sufficient to protect the Government from dishonest employees. More zealous informational activities on the part of management were recommended by witnesses in lieu of the many questionnaires now required.

The employee criticism of such inquiries was summarized as follows:

"There are ample laws on the statute books dealing with fraudulent employment, conflicts of interest, etc. The invasion of privacy of the individual employee is serious enough, but the invasion of the privacy of family, relatives and children of the employee is an outrage against a free society.

"This forced financial disclosure has caused serious moral problems and feelings by employees that the agencies distrust their integrity. We do not doubt that if every employee was required to file an absolutely honest financial disclosure, that a few, though in-

significant number of conflict-of-interest cases may result. However, the discovery of the few legal infractions could in no way justify the damaging effects of forced disclosures of a private nature. Further, it is our opinion that those who are intent on engaging in activities which result in a conflict of interest would hardly supply that information on a questionnaire or financial statement. Many employees have indicated that rather than subject their families to any such unwarranted invasion of their right to privacy, that they are seriously considering other employment outside of Government."

The bill will reduce to reasonable proportions such inquiries as the following questionnaire, which many thousands of employees have periodically been required to submit.

(Questionnaire follows:)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

(For use by regular Government employees)

Name, (Last, First, Initial) _____

Title of position _____

Date of appointment in present position _____

Organization location (Operating agency, bureau, division) _____

Part I. Employment and financial interests

List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities or other arrangements including trusts. If none, write None.

Name and kind or organization (use Part I designations where applicable) _____

Address _____

Position in organization (Use Part I(a) designations, if applicable) _____

Nature of financial interest, e.g., stocks, prior income (Use Part I(b) & (c) designations if applicable) _____

Part II. Creditors

List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal resident or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write None.

Name and address of creditor _____

Character of indebtedness, e.g., personal loan, note, security _____

Part III. Interests in real property

List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write None.

Nature of interest, e.g., ownership, mortgage, lien, investment trust _____

Type of property, e.g., residence, hotel, apartment, undeveloped land _____

Address (if rural, give RFD or county and State) _____

Part IV. Information requested of other persons

If any information is to be supplied by other persons, e.g., trustee, attorney, ac-

countant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write None.

Name and address _____

Date of request _____

Nature of subject matter _____

(This space reserved for additional instructions.)

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

Date _____

Signature _____

The vagueness of the standards for requiring such a broad surrender of privacy is illustrated by the Civil Service Commission's regulation applying this to any employee whose duties have an "economic impact on a non-Federal enterprise."

Also eliminated will be questionnaires asking employees to list "all assets, or everything you and your immediate family own, including date acquired and cost or fair market value at acquisition. (Cash in banks, cash anywhere else, due from others—loans, et cetera automobiles, securities, real estate, cash surrender of life insurance; personal effects and household furnishings and other assets.)"

The view of the president of the United Federation of Postal Clerks reflected the testimony of many witnesses endorsing sections i (i) and (j) of the bill.

"If the conflict-of-interest questionnaire is of doubtful value in preventing conflict of interest, as we believe, we can only conclude that it does not meet the test of essentiality and that it should be proscribed as an unwarranted invasion of employee privacy. Such value as it may have in focusing employee attention upon the problem of conflict of interest and bringing to light honest oversights that may lead to conflict of interest could surely be achieved by drawing attention to the 26 or more laws pertaining to conflict of interest or by more zealous information activities on the part of management."

The complex problem of preserving the confidential nature of such reports was described by officials of the National Association of Internal Revenue Employees:

"The present abundance of financial questionnaires provides ample material for even more abusive personnel practices. It is almost inevitable that this confidential information cannot remain confidential. Typically, the financial questionnaire is filed with an employee's immediate supervisor. The net worth statements ultimately go into inspection, but they pass through the hands of local personnel administrators. We have received a great number of disturbing reports—as have you—that this information about employees' private affairs is being used for improper purposes, such as enforced retirement and the like."

Inadequacies in agency procedures for obtaining such information from employees and for reviewing and storing it, are discussed in the Subcommittee report for the 89th Congress, 2d Session. Widely disparate attitudes and practices are also revealed in a Subcommittee study contained in the appendix of the printed hearings on S. 3779.

The bill will make such complaints as the following unnecessary in the future conduct of the Federal Government:

"DEAR SENATOR ERVIN: I am writing to applaud the stand you have taken on the new requirement that Federal employees in certain grades and categories disclose their financial holdings to their immediate superior. Having been a civil service employee

for 26 years, and advanced from GS-4 to GS-15, and been cleared for top secret during World War II, and because I currently hold a position that involves the disposition of hundreds of thousands of the taxpayers' money, it is my conviction that my morality and trustworthiness are already a matter of record in the files of the Federal Government.

"The requirement that my husband's financial assets be reported, as well as my own assets and those we hold jointly, was particularly offensive, since my husband is the head of our household and is not employed by Government.

"You might also be interested in the fact that it required 6 hours of after-hours work on our part to hunt up all the information called for and prepare the report. Since the extent of our assets is our private business, it was necessary that I type the material myself, an added chore since I am not a typist.

"Our assets have been derived, in the main, from laying aside a portion of our earnings. At our ages (64 and 59) we would be far less deserving of respect had we not made the prudent provisions for our retirement which our assets and the income they earn represent. Yet this reporting requirement carries with it the implication that to have "clean hands" it would be best to have no assets or outside, unearned income when you work for the Federal Government.

"For your information I am a GS-15, earning \$19,415 * * *

"Thank you for speaking out for the continually maligned civil servant.

"Sincerely yours,

"_____."

DEAR SENATOR ERVIN: I am a GS-12 career employee with over 15 years service.

The highest moral and ethical conduct has been my goal in each of my positions of employment and I have found this to be true of a vast majority of my fellow workers. It may be true a few people do put material gain ahead of their ethics but generally these people are in the higher echelons of office where their influence is much greater.

Our office has recently directed each employee from file clerk to the heads of sections to file a "Statement of Financial Interest." As our office has no programs individuals could have a financial interest in and especially no connections with FHA I feel it is no one's business but my own what real estate I own. I do not have a FHA mortgage or any other real property and have no outside employment, hence have nothing to hide by filing a blank form. Few Government workers can afford much real property. The principal of reporting to "Big Brother" in every phase of your private life to me is very degrading, highly unethical and very unquestionable as to its effectiveness. If I could and did use my position in some way to make a profit I would be stupid to report it on an agency inquiry form. What makes officials think reporting will do away with graft?

When the directive came out many man-hours of productive work were lost in discussions and griping. Daily since that date at some time during the day someone brings up the subject. The supervisors filed their reports as "good" examples but even they objected to this inquiry.

No single thing was ever asked of Government employees that caused such a decline in their morale. We desperately need a "bill of rights" to protect ourselves from any further invasion of our private lives.

Fifteen years ago I committed myself to Government service because: (a) I felt an obligation to the Government due to my education under the GI bill, (b) I could obtain freedom from pressures of unions, (c) I could obtain freedom from invasion of my private life and (d) I would be given the opportunity to advance based solely on my

professional ability and not on personal politics. At this point I certainly regret my decision to make the Government my career.

Sincerely,

DEAR SENATOR: I write to beg your support of a "Bill of Rights" to protect Federal employees from official snooping which was introduced by Senator Ervin of North Carolina.

I am a veteran of two wars and have orders to a third war as a ready reservist. And I know why I serve in these wars: that is to prevent the forces of tyranny from invading America.

Now, as a Federal employee I must fill out a questionnaire giving details of my financial status. This is required if I am to continue working. I know that this information can be made available to every official in Washington, including those who want to regulate specific details of my life.

Now I am no longer a free American. For example, I can no longer buy stock of a foreign company because that country may be in disfavor with officials of the right or left. And I cannot "own part of America" by buying common stocks until an "approved list" is published by my superiors.

I can never borrow money because an agent may decide that debt makes me susceptible to bribery by agents of an enemy power. Nor do I dare own property lest some official may decide I should sell or rent to a person or group not of my choosing.

In short, I am no longer free to plan my own financial program for the future security of my family. In 1 day I was robbed of the freedom for which I fought two wars. This is a sickening feeling, you may be sure.

It seems plain that a deep, moral issue is involved here that concerns every citizen. If this thing is allowed to continue, tomorrow or next year every citizen may come under the Inquisition. The dossier on every citizen will be on file for the use of any person or group having enough overt or covert power to gain access to them.

Sincerely,

In August 1966 Federal employees who were retired from the armed services were told to complete and return within 7 days, with their social security numbers, a 15-page questionnaire, asking, among other things:

"How much did you earn in 1965 in wages, salary, commissions, or tips from all jobs?"

"How much did you earn in 1965 in profits or fees from working in your own business, professional practice, partnership, or farm?"

"How much did you receive in 1965 from social security, pensions (nonmilitary), rent (minus expenses), interests or dividends, unemployment insurance, welfare payments, or from any other source not already entered?"

"How much did other members of your family earn in 1965 in wages, salary, commissions or tips? (Before any deductions.) (For this question, a family consists of two or more persons in the same household who are related to each other by blood, marriage, or adoption.) If the exact amount is not known, give your best estimate.

"How much did other members of your family earn in 1965 in profits or fees from working in their own business, professional practices, partnership, or farm?"

"How much did any other member of your family receive in 1965 from social security, pensions, rent (minus expenses), interest or dividends, unemployment insurance, welfare payments; or from any other source not already entered?"

RIGHT TO COUNSEL

Section 1(k) of the bill guarantees to Federal workers the opportunity of asking the presence of legal counsel, of a friend or other person when undergoing an official interrogation or investigation that could lead to the loss of their jobs or to disciplinary action.

The merits of this clause are manifold; not least of which is that uniformity and order it will bring to the present crazy quilt practices of the various agencies concerning the right to counsel for employees facing disciplinary investigations or possible loss of security clearances tantamount to loss of employment. The Civil Service Commission regulations are silent on this critical issue. In the absence of any Commission initiative or standard, therefore, the employing agencies are pursuing widely disparate practices. To judge from the questionnaires and other evidence before the subcommittee, a few agencies appear to afford a legitimate right to counsel, probably many more do not, and still others prescribe a "right" on paper but hedge it in such a fashion as to discourage its exercise. Some apparently do not set any regulatory standard, but handle the problem on an ad hoc basis.

On a matter as critical as this, such a pointless diversity of practice is poor policy. So far as job-protection rights are concerned, all Federal employees should be equal.

A second anomaly in the present state of affairs derives from recent developments in the law of the sixth amendment by the Supreme Court. In view of the decisions of *Miranda v. Arizona*, 384 U.S. 436 and *Escobedo v. Illinois*, 378 U.S. 478, it is clear that any person (including Federal employees) who is suspected of a crime is absolutely entitled to counsel before being subjected to custodial interrogation. Accordingly, some agencies, such as the Internal Revenue Service, acknowledge an unqualified right to counsel for an employee suspected of crime but decline to do the same for coworkers threatened with the loss of their livelihoods for noncriminal reasons. In the subcommittee's view, this discrimination in favor of the criminal suspect is both bad personnel policy as well as bad law. It would be corrected by this section of the bill.

The ultimate justification for the "right-to-counsel" clause, however, is the Constitution itself. There is no longer any serious doubt that Federal employees are entitled to due process of law as an incident of their employment relation. Once, of course, the courts felt otherwise, holding that absent explicit statutory limitation, the power of the executive to deal with employees was virtually unfettered.

The doctrinal underpinning of this rule was the 19th-century notion that the employment relation is not tangible "property." Both the rule and its underpinning have now been reexamined. The Supreme Court in recent years has emphasized the necessity of providing procedural due process where a man is deprived of his job or livelihood by governmental action.

While the courts have as yet had no occasion to articulate a specific right to counsel in the employment relationship, there can obviously be no doubt that the right to counsel is of such a fundamental character that it is among the essential ingredients of due process. What is at stake for an employee in a discharge proceeding—often including personal humiliation, obloquy and penury—is just as serious as that involved in a criminal trial. This is not to suggest that all the incidents of our civilized standard of a fair trial can or should be imported into Federal discharge proceedings. But if we are to have fair play for Federal employees, the right of counsel is a *sine qua non*. It is of a piece with the highest traditions, the fairest laws, and the soundest policy that this country has produced. And, in the judgment of this subcommittee, the clear affirmation of this basic right is very long overdue.

The need for such protection was confirmed at the hearings by all representatives of Government employee organizations and unions.

The president of the National Association of Letter Carriers testified:

"It is a practice in the postal inspection service, when an employee is called in for questioning by the inspectors on a strictly postal matter that does not involve a felony, to deny the right of counsel. The inspectors interrogate the employee at length and, at the completion of the interrogation, one of the inspectors writes out a statement and pressures the employee to sign it before he leaves the room. We have frequently asked the postal inspection service to permit these employees to have counsel present at the time of the interrogation. The right for such counsel has been denied in all except a few cases. If the employee is charged with a felony, then, of course, the law takes over and the right for counsel is clearly established but in other investigations and interrogations no counsel is permitted."

Several agencies contend that right to counsel is now granted in formal adverse action proceedings and that appeals procedures make this section unnecessary for informal questioning. Testimony and complaints from employees indicate that this machinery does not effectively secure the opportunity of the employee to defend himself early enough in the investigation to allow a meaningful defense.

The predicament of postal employees as described at the hearings reflects the situation in other agencies as reported in many individual cases sent to the subcommittee. While it is undoubtedly true that in some simple questioning, counsel may not be necessary, in many matters where interrogation will result in disciplinary action, failure to have counsel at the first level reacts against the employee all the way up through the appeal and review. In the case of a postal employee, the subcommittee was told—

"The first level is at the working foreman's level. He is the author of the charges; then the case proceeds to the postmaster, who appointed the foreman and, if the individual is found guilty of the charge at the first level, it is almost inevitable that this position will be supported on the second level. The third level is the regional level, and the policy there is usually that of supporting the local postmaster. A disinterested party is never reached. The fourth level is the Appeals Board, composed of officials appointed by the Postmaster General. In some cases, the region will overrule the postmaster, but certainly the individual does not have what one could style an impartial appeals procedure."

Employees charged with no crime have been subjected to intensive interrogations by Defense Department investigators who ask intimate questions, make sweeping allegations, and threaten dire consequences unless consent is given to polygraph tests. Employees have been ordered to confess orally or to write and sign statements. Such interviews have been conducted after denial of the employee's request for presence of supervisor, counsel, or friend, and in several instances the interrogations have resulted in revocation of a security clearance, or denial of access to classified information by transfer or reassignment, with the resulting loss of promotion opportunities.

Witnesses testified that employees have no recourse against the consequences of formal charges based on information and statements acquired during a preliminary investigation. This renders meaningless the distinction urged by the Civil Service Commission between formal and informal proceedings.

EXCEPTIONS

The act, under section 9, does not apply to the Federal Bureau of Investigation. Furthermore, section 6 provides that nothing in the act will prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide a personal fi-

nanacial statement designed to elicit the personal information protected under subsections 1 (e), (f), (i), and (j). In such cases, the Director of the agency or his designee must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

An exception to the right-to-counsel section has been provided to limit this right for employees in the Central Intelligence Agency and the National Security Agency to a person who serves in the same agency or a counsel cleared by the agency for access to the information involved. Obviously, it is expected that the employee's right to be accompanied by the person of his choice will not be denied unless that person's access to the information for the purpose of the case is clearly inconsistent with the national security. Other committee language in S. 782 recognizes problems unique to these two agencies. For instance, section 7 requires exhaustion of remedies by employees of the Central Intelligence Agency and the National Security Agency and states that the act does not affect whatever existing statutory authority these agencies now possess to terminate employment. Section 8 is designed to assure that nothing in the act is construed to affect negatively any existing statutory or executive authority of the Directors of the Central Intelligence Agency and National Security Agency to protect their information in cases involving their employees. Consequently, procedures recommended to the subcommittee by the Director of the Central Intelligence Agency are spelled out for asserting that authority in certain proceedings arising under the act. Other committee amendments to S. 1035, as detailed earlier, were adopted to meet administrative requirements of the Federal security program and the intelligence community as well as the management needs of the executive branch.

ENFORCEMENT

Enforcement of the rights guaranteed in sections 1 and 2 of the bill is lodged in the administrative and civil remedies and sanctions of sections 3, 4, and 5. Crucial to enforcement of the act is the creation of an independent Board of Employee Rights to determine the need for disciplinary action against civilian and military offenders under the act and to provide relief from violations.

Testimony at the hearing as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens.

Under the remedies afforded by sections 3, 4, and 5 of the bill, an employee who believes his rights are violated under the act has several courses of action:

(1) He may pursue a remedy through the agency procedures established to enforce the act, but the fact that he does not choose to avail himself of these does not preclude exercise of his right to seek other remedies.

(2) He may register his complaint with the Board on Employee Rights and obtain a hearing. If he loses there, he may appeal to the district court, which has the power to examine the record as a whole and to affirm, modify, or set aside any determination of order, or to require the Board to take any action it was authorized to take under the act.

(3) He may, instead of going directly to the Board, institute a civil action in Federal district court to prevent the threatened violation, or obtain complete redress against the consequences of the violation.

He does not need to exhaust any administrative remedies but if he elects to pursue his civil remedies in the court under section 4, he may not seek redress through the Board.

Similarly, if he initiates action before the Board under section 5, he may not also seek relief from the court under section 4.

The bill does not affect any authority, right or privilege accorded under Executive Order 11491 governing employee-management cooperation in the Federal service. To the extent that there is any overlapping of subject matter, the bill simply provides an additional remedy.

THE BOARD ON EMPLOYEE RIGHTS

As a result of hearings on S. 3779, the section creating a Board on Employee Rights was added to the bill for introduction as S. 1035.

Employees have complained that administrative grievance procedures have often proved ineffective because they are cumbersome, time-consuming, and weighted on the side of management. Not only do those who break the rules go unpunished many times, but the fearful tenor of letters and telephone calls from throughout the country indicate that employees fear reprisals for noncompliance with improper requests or for filing of complaints and grievances. Oral and written directives of warning to this effect have been verified by the subcommittee. Section 1(e) of the bill, therefore, prevents reprisals for exercise of rights granted under the act and in such event accords the individual cause for complaint before the Board or the court.

Concerning the original bill in the 89th Congress, which did not provide for a board, representatives of the 14th department of the American Federation of Government Employees commented that the remedies are the most important aspects of such a bill because "unless due process procedures are explicitly provided, the remaining provisions of the bill may be easily ignored or circumvented by Federal personnel management. As a matter of fact, we believe, the reason employees' rights have been eroded so rapidly and so devastatingly in the last few years is the absence of efficient, expeditious, uniform, and legislatively well defined procedures of due process in the executive departments of the Federal Government."

An independent and nonpartisan Board is assured by congressional participation in its selection and by the fact that no member is to be a government employee. Provision is made for congressional monitoring through detailed reports.

Senator Ervin explained the function of the Board established by section 5 as follows:

"The bill sets up a new independent Federal agency with authority to receive complaints and make rulings on complaints—complaints of individual employees or unions representing employees. This independent agency, which would not be subject in any way to the executive branch of the Government, would be authorized to make rulings on these matters in the first instance. It would make a ruling on action in a particular agency or department that is an alleged violation of the provisions of the bill, with authority either on the part of the agency or the part of the individual or on the part of the union to take an appeal from the ruling of this independent agency to the Federal court for judicial review."

Throughout its study the subcommittee found that a major area of concern is the tendency in the review process in the courts or agencies to do no more than examine the lawfulness of the action or decision about which the employee has complained. For purposes of enforcing the act, sections 3, 4, and 5 assure adequate machinery for processing complaints and for prompt and impartial determination of the fairness and constitutionality of general policies and practices initiated at the highest agency levels or by the Civil Service Commission or by Executive order.

Finding no effective recourse against administrative actions and policies which they believed unfair or in violation of their rights,

individual employees and their families turned to Congress for redress. Opening the hearings on invasions of privacy, Senator Ervin stated:

"Never in the history of the Subcommittee on Constitutional Rights have we been so overwhelmed with personal complaints, phone calls, letters, telegrams, and office visits. In all of our investigations I have never seen anything to equal the outrage and indignation from Government employees, their families, and their friends. It is obvious that appropriate remedies are not to be found in the executive branch.

"The complaints of privacy invasions have multiplied so rapidly of late that it is beyond the resources of Congress and its staff to repel effectively each individual official encroachment. Each new program brings a new wave of protest."

Prof. Alan Westin, director of the Science and Law Committee of the Bar Association of the city of New York, testified that these complaints "have been triggered by the fact that we do not yet have the kind of executive branch mechanism by which employees can lodge their sense of discomfort with personnel practices in the Federal Government and feel that they will get a fair hearing, that they will secure what could be called 'employment due process.'"

To meet this problem, Professor Westin proposed an independent board subject to judicial review, and with enforcement power over a broad statutory standard governing all invasion of privacy. Although it is continuing to study this proposal, the subcommittee has temporarily rejected this approach in the interest of achieving immediate enforcement of the act and providing administrative remedies for its violation. For this reason it supports the creation of a limited Board on Employee Rights.

Perhaps one of the most important sections of the bill, if not the most important section, according to the United Federation of Postal Clerks, is the provision establishing the Board. The subcommittee was told—

"It would appear absolutely essential that any final legislation enacted into law must necessarily include such a provision. We can offer no suggestions for improvement of this section. As presently constituted the section is easily understood; and the most excellent and inclusive definition of the proposed 'Board on Employees' Rights' which could possibly be enacted into law. It defines the right of employees to challenge violations of the proposed act; defines the procedures involved, as well as the authority of the Board, penalties for violation of the act, as well as establishing the right of judicial review for an aggrieved party, and finally provides for congressional review, and in effect, an annual audit by the Congress of all complaints, decisions, orders, and other related information resulting from activities and operations of the proposed act."

Sanctions

The need for sanctions against offending officials has been evident throughout the subcommittee's investigation of flagrant disregard of basic rights and unpunished flaunting of administrative guidelines and prohibitions. It was for this reason that S. 3779 of the 89th Congress and S. 1035, as introduced, contained criminal penalties for offenders and afforded broad civil remedies and penalties.

Reporting on the experiences of the American Civil Liberties Union in such employee cases, Lawrence Spelser testified:

"In filing complaints with agencies, including the Civil Service Commission, the Army and the Navy, as I have during the period of time I have worked here in Washing-

ton, I have never been informed of any disciplinary action taken against any investigator for asking improper questions, for engaging in improper investigative techniques, for barring counsel when a person had a right to have counsel, or for a violation of any number of things that you have in this bill. Maybe some was taken, but I certainly couldn't get that information out of the agencies, after making the complaints. I would suggest that the bill also encompass provision for disciplinary action that would be taken against Federal employees who violate any of these rights that you have set out in the bill."

Other witnesses also pointed to the need for the disciplinary measures afforded by the powers of an independent Board to determine the need for corrective action and punishment, and felt they would be more effective than criminal penalties.

In view of the difficulty of filing criminal charges and obtaining prosecution and conviction of executive branch officials which might render the criminal enforcement provision meaningless for employees, a subcommittee amendment deleted the criminal penalties in section 4 from the bill as reported.³

Although the Civil Service Commission and the executive agencies have advocated placing such administrative remedies within the civil service grievance and appeals system, the subcommittee believes that the key to effective enforcement of the unique rights recognized by this act lies in the employee's recourse to an independent body.

"The theory of our Government," Professor Westin testified, "is that there should be somewhere within the executive branch where this kind of malpractice is corrected and that good administration ought to provide for control of supervision or other practices that are not proper. But the sheer size of the Federal Establishment, the ambiguity of the relationship of the Civil Service Commission to employees, and the many different interests that the Civil Service Commission has to bear in its role in the Federal Government, suggest that it is not an effective instrument for this kind of complaint procedure."

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1(a)

Section 1(a) makes it unlawful for a Federal official of any department or agency to require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency or any person seeking employment to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This section does not prohibit inquiry concerning citizenship of such individual if his citizenship is a statutory condition of his obtaining or retaining his employment. Nor does it preclude inquiry of the individual concerning his national origin or citizenship or that of his forebears when such inquiry is thought necessary or advisable in order to determine suitability for assignment to activities or undertakings related to national security within the United States or to activities or undertakings of any nature outside the United States.

This provision is directed at any practice which places the employee or applicant under compulsion to reveal such information as a condition of the employment relation. It is intended to implement the concept un-

³ In the 89th Congress, S. 1035.

derlying the Federal merit system by which a person's race, religion, or national origin have no bearing on his right to be considered for Federal employment or on his right to retain a Federal position. This prohibition does not limit the existing authority or the executive branch to acquire such information by means other than self-disclosure.

Section 1(b)

Section 1(b) makes it unlawful for any officer of any executive department or executive agency of the U.S. Government, or for any person acting or purporting to act under this authority, to state, intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the U.S. Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than (1) the performance of official duties to which he is or may be assigned in the department or agency, or (2) the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

Nothing contained in this section is to be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

This provision is designed to protect any employee from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties. It prevents Government officials from using the employment relationship to attempt to influence employee thoughts, attitudes, and actions on subjects which may be of concern to them as private citizens. In particular, this language is directed at practices and policies which in effect require attendance at such functions, including official lists of those attending or not attending; its purpose is to prohibit threats, direct or implied, written or oral, or official retaliation for nonattendance.

This section does not affect existing authority for providing information designed to promote the health and safety of employees. Nor does it affect existing authority to call meetings for the purpose of publicizing and giving notice of activities or service, sponsored by the department or agency, or campaigns such as charitable fund campaigns and savings bond drives.

Section 1(c)

Section 1(c) makes it unlawful for any officer of any executive department or agency or for any person acting or purporting to act under his authority, to require or request or to attempt to require or request any civilian employee serving in the department or agency to participate in any way in any activities or undertakings unless they are related to the performance of official duties to which he is or may be assigned in the department or agency or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

This section is directed against official practices, requests, or orders that an employee take part in any civic function, political program, or community endeavor, or other activity which he might enjoy as a private citizen, but which is unrelated to his employment. It does not affect any existing authority to use appropriate techniques for publicizing existence of community programs

such as blood-donation drives, or agency programs, benefits or services, and for affording opportunity for employee participation if he desires.

Section 1(d)

Section 1(d) makes it unlawful for any officer of any executive department or agency, or for any person acting under his authority to require or request or attempt to require or request, any civilian employee serving in the department or agency to make any report of his activities or undertakings unless they are related to the performance of official duties or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or (2) unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

This section is a minimum guarantee of the freedom of an employee to participate or not to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or his inaction, his involvement or his noninvolvement. This section is to assure that in his private thoughts, actions, and activities he is free of intimidation or inhibition as a result of the employment relation.

The exceptions to the prohibition are not legislative mandates to require such information in those circumstances, but merely provide, an area of executive discretion for reasonable management purposes and for observance and enforcement of existing laws governing employee conduct and conflicts of interest.

Section 1(e)

Section 1(e) makes it unlawful for any officer of any executive department or agency, or any person acting under his authority, to require or request any civilian employee serving in the department or agency, or any person applying for employment as a civilian employee to submit to any interrogation or examination or to take any psychological test designed to elicit from him any information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

In accordance with an amendment made after hearings on S. 3779, a proviso is included to assure that nothing contained in this section shall be construed to prevent a physician from eliciting such information or authorizing such test in the diagnosis or treatment of any civilian employee or applicant where he feels the information is necessary to enable him to determine whether or not the individual is suffering from mental illness. The bill as introduced limited this inquiry to psychiatrists, but an amendment extended it to physicians, since the subcommittee was told that when no psychiatrist is available, it may be necessary for a general physician to obtain this information in determining the presence of mental illness and the need for further treatment.

This medical determination is to be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties.

Under an amendment to the bill, this language is not to be construed to prohibit an official from advising an employee or applicant of a specific charge of sexual misconduct made against that person and affording him an opportunity to refute the charge. While providing no authority to request or demand such information, the section does not prevent an official who has received charges of misconduct which might have a detrimental effect on the person's employment, from obtaining a clarification of the matter if the employee wishes to provide it.

This section would not prohibit all personality tests but merely those questions on the tests which inquire into the three areas

in which citizens have a right to keep their thoughts to themselves.

It raises the criterion for requiring such personal information from the general "fitness for duty" test to the need for diagnosing or treating mental illness. The second proviso is designed to prohibit mass-testing programs. The language of this section provides guidelines for the various personnel and medical specialists whose practices and determinations may invade employee personal privacy and thereby affect the individual's employment prospects or opportunities for advancement.

An amendment in section 6 provided an exception to this prohibition in the case of the use of such psychological tests by the Central Intelligence Agency and the National Security Agency, only if the Director of the agency or his designee makes a personal finding that the information is necessary to protect the national security.

Section 1(f)

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority, to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate entirely the use of so-called lie detectors in Government, it assures that where such devices are used, officials may not inquire into matters which are of a personal nature.

As with psychological testing, the Central Intelligence Agency and the National Security Agency, under section 6, are not prohibited from acquiring such information by polygraph, provided certain conditions are met.

Section 1(g)

Section 1(g) makes it illegal for an official to require or request an employee under his management to support the nomination or election of anyone to public office through personal endeavor, financial contribution, or any other thing of value. An employee may not be required or requested to attend any meeting held to promote or support the activities or undertakings of any political party in the United States.

The purpose of this section is to assure that the employee is free from any job-related pressures to conform his thoughts and attitudes and actions in political matters unrelated to his job to those of his supervisors. With respect to his superiors, it protects him in the privacy of his contribution or lack of contribution to the civic affairs and political life of his community, State and Nation. In particular, it protects him from commands or requests of his employer to buy tickets to fundraising functions, or to attend such functions, to compile position papers or research material for political purposes, or make any other contribution which constitutes a political act or which places him in the position of publicly expressing his support or non-support of a party or candidate. This section also assures that, although there is no evidence of such activities at present, no Federal agency may in the future improperly involve itself in the undertakings of any political party in the United States, its territories, or possessions.

Section 1(h)

Section 1(h) makes it illegal for an official to coerce or attempt to coerce any civilian employee in the department or agency to invest his earnings in bonds or other government obligations or securities, or to make donations to any institution or cause. This section does not prohibit officials from calling meetings or taking any other appropriate

action to afford employees the opportunity voluntarily to invest his earnings in bonds or other obligations or voluntarily to make donations to any institution or cause. Appropriate action, in the committee's view, might include publicity and other forms of persuasions short of job-related pressures, threats, intimidation, reprisals of various types, and "blacklists" circulated through the employee's office or agency to publicize his noncompliance.

Section 1(i)

Section 1(i) makes it illegal for an official to require or request any civilian employee in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family. Exempted from coverage under this provision is any civilian employee who has authority to make any final determination with respect to the tax or other liability to the United States of any person, corporation, or other legal entity, or with respect to claims which require expenditure of Federal moneys. Section 6 provides certain exemptions for two security agencies.

Neither the Department of the Treasury nor any other executive department or agency is prohibited under this section from requiring any civilian employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law. This proviso is to assure that Federal employees may be subject to any reporting or disclosure requirements demanded by any law applicable to all persons in certain circumstances.

Section 1(j)

Section 1(j) makes it illegal to require or request any civilian employee exempted from application of section 3(i) under the first proviso of that section, to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditure or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

This section is designed to abolish and prohibit broad general inquiries which employees have likened to "fishing expeditions" and to confine any disclosure requirements imposed on an employee to reasonable inquiries about job-related financial interests. This does not preclude, therefore, questioning in individual cases where there is reason to believe the employee has a conflict of interest with his official duties.

Section 1(k)

Section 1(k) makes it unlawful for a Federal official of any department or agency to require or request, or attempt to require or request, a civilian employee who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he wishes.

This section is intended to rectify a longstanding denial of due process by which agency investigators and other officials prohibit or discourage presence of counsel or a friend. This provision is directed at any interrogation which could lead to loss of job, pay, security clearance, or denial of promotion rights.

This right insures to the employee at the inception of the investigation, and the section does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend. The section does not require the agency or department to furnish counsel.

A committee amendment to S. 782 adds a proviso that a civilian employee serving in the Central Intelligence Agency or the National Security Agency may be accompanied

only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

Section 1(1)

Section 1(1) makes it unlawful for a Federal official of any department or agency to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise impair existing terms or conditions of employment of any employee, or threaten to commit any such acts, because the employee has refused or failed to comply with any action made unlawful by this act or exercised any any right granted by the act.

This section prohibits discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

SECTION 2

Section 2(a) makes it unlawful for any officer of the U.S. Civil Service Commission or any person acting or purporting to act under his authority to require or request, or attempt to require or request, any executive department or any executive agency of the U.S. Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this act.

Specifically, this section is intended to ensure that the Civil Service Commission, acting as the coordinating policymaking body in the area of Federal civilian employment shall be subject to the same strictures as the individual departments or agencies.

Section 2(b) makes it unlawful for any officer of the U.S. Civil Service Commission, or any person acting or purporting to act under his authority, to require or request, or attempt to require or request, any person seeking to establish civil service status or eligibility for civilian employment, or any person applying for employment, or any civilian employee of the United States serving in any department or agency, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section is intended to assure that the Civil Service Commission shall be subject to the same prohibitions to which departments and agencies are subject in sections 1 (e) and (f). The provisions contained in section 1(e) are restated here to assure that nothing in this section is to be construed to prohibit a physician from acquiring such data to determine mental illness, or an official from informing an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge.

Section 2(c) makes it unlawful for any officer of the U.S. Civil Service Commission to require or request any person seeking to establish civil service status or eligibility for employment, or any person applying for employment in the executive branch of the U.S. Government, or any civilian employee serving in any department or agency to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section applies the provisions of section 1(f) to the Civil Service Commission in instances where it has authority over agency personnel practices or in cases in which its officials request information from the applicant or employee.

SECTION 3

This section applies the act to military supervisors by making violations of the act

also violations of the Uniform Code of Military Justice.

SECTION 4

Section 4 provides civil remedies for violation of the act by granting an applicant or employee the right to bring a civil action in the Federal district court for a court order to halt the violation, or to obtain complete redress against the consequences of the violation. The action may be brought in his own behalf or in behalf of himself and others similarly situated, and the action may be filed against the offending officer or person in the Federal district court for the district in which the violation occurs or is threatened, or in the district in which the offending officer or person is found, or in the District Court for the District of Columbia.

The court hearing the case shall have jurisdiction to adjudicate the civil action without regard to the actuality or amount of pecuniary injury done or threatened. Moreover, the suit may be maintained without regard to whether or not the aggrieved party has exhausted available administrative remedies. If the individual complainant has pursued his relief through administrative remedies established for enforcement of the act and has obtained complete protection against threatened violations or complete redress for violations, this relief may be pleaded in bar of the suit. The court is empowered to provide whatever broad equitable and legal relief it may deem necessary to afford full protection to the aggrieved party; such relief may include restraining orders, interlocutory injunctions, permanent injunctions, mandatory injunctions, or such other judgments or decrees as may be necessary under the circumstances.

Another provision of section 4 would permit an aggrieved person to give written consent to any employee organization to bring a civil action on his behalf, or to intervene in such action. "Employee organizations" as used in this section includes any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of Federal civilian employees, and which deals with departments, agencies, commissions, and independent agencies regarding employee matters.

A committee amendment provides that the Attorney General shall defend officers or persons who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of the act.

SECTION 5

Section 5 establishes an Independent Board on Employees' Rights, to provide employees with an alternative means of obtaining administrative relief from violations of the act, short of recourse to the judicial system.

Section 5(a) provides for a Board composed of three members, appointed by the President with the consent of the Senate. No member shall be an employee of the U.S. Government and no more than two members may be of the same political party. The President shall designate one member as Chairman.

Section 5(b) defines the term of office for members of the Board, providing that one member of the initial Board shall serve for 5 years, one for 3 years, one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

Section 5(c) establishes the compensation for Board members at \$75 for each day spent working in the work of the Board, plus actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence.

Section 5(d) provides that two members of the Board shall constitute a quorum for the transaction of business.

Section 5(e) provides that the Board may appoint and fix the compensation of neces-

sary employees, and make such expenditures necessary to carry out the functions of the Board.

Section 5(f) authorizes the Board to make necessary rules and regulations to carry out its functions.

Section 5(g) provides that the Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this act, and to conduct a hearing on each such complaint. Moreover, within 10 days after the receipt of such a complaint, the Board must furnish notice of time, place, and nature of the hearing to all interested parties, and within 30 days after concluding the hearing, it must render its final decision regarding any complaint.

Section 5(h) provides that officers or representatives of any employee organization in any degree concerned with employment of the category in which the violation or threat occurs, shall be given an opportunity to participate in the hearing through submission of written data, views, or arguments. In the discretion of the Board they are to be afforded an opportunity for oral presentation. This section further provides that Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or loss in leave or pay. They shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such proceedings shall be held to be Federal employment for all purposes.

Section 5(i) applies to the Board hearings the provisions of the Administrative Procedure Act relating to notice and conduct of hearings insofar as consistent with the purpose of this section.

Section 5(j) requires the Board, if it determines after a hearing that this act has not been violated, to state such determination and notify all interested parties of the findings. This determination shall constitute a final decision of the Board for purposes of judicial review.

Section 5(k) specifies the action to be taken by the Board if, after a hearing, it determines that any violation of this act has been committed or threatened. In such case, the Board shall immediately issue and cause to be served on the offending officer or employee an order requiring him to cease and desist from the unlawful practice or act. The Board is to endeavor to eliminate the unlawful act or practice by informal methods of conference, conciliation, and persuasion.

Within its discretion, the Board may, in the case of a first offense, issue an official reprimand against the offending officer or employee, or order the employee suspended from his position without pay for a period not exceeding 15 days. In the case of a second or subsequent offense, the Board may order the offending officer or employee suspended without pay for a period not exceeding 30 days, or may order his removal from office.

Officers appointed by the President, by and with the advice and consent of the Senate, are specifically excluded from the application of these disciplinary measures; but the section provides that, in the case of a violation of this act by such individuals, the Board may transmit a report concerning such violation to the President and the Congress.

Section 5(1) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to

any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination and report is received, the person designated shall immediately dispose of the matter under the provision of chapter 47 of title 10 of the United States Code.

Section 5(m) provides that when any party disagrees with an order or final determination of the Board, he may institute a civil action for judicial review in the Federal district court for the district wherein the violation or threatened violation occurred, or in the District Court for the District of Columbia.

The court has jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board, or (2) require the Board to make any determination or order which it is authorized to make under section 5(k) but which it has refused to make. In considering the record as a whole, the court is to set aside any finding, conclusion, determination, or order of the Board unsupported by substantial evidence.

The type of review envisioned here is similar to that obtained under the Administrative Procedure Act in such cases but this section affords a somewhat enlarged scope for consideration of the case than is now generally accorded on appeal of employee cases. The court here has more discretion for action on its own initiative. To the extent that they are consistent with this section, the provisions for judicial review in title 5 of the United States Code would apply.

Section 5(n) provides for congressional review by directing the Board to submit to the Senate and to the House of Representatives an annual report which must include a statement concerning the nature of all complaints filed with it, the determinations and orders resulting from hearings, and the names of all officers or employees against whom any penalties have been imposed under this section.

Section 5(o) provides an appropriation of \$300,000 for the Board on Employee Rights.

SECTION 6

Section 6 provides that nothing in the act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency, under specific conditions, from requesting an applicant or employee to submit a personal financial statement of the type defined in subsections 1 (i) and (j) or to take any polygraph or psychological test designed to elicit the personal information protected under subsection 1(e) or 1(f).

In these agencies, such information may be acquired from the employee or applicant by such methods only if the Director of the agency or his designee makes a personal finding with regard to each individual that such test or information is required to protect the national security.

SECTION 7

Section 7 requires, in effect, that employees of the Central Intelligence Agency and the National Security Agency exhaust their administrative remedies before invoking the provisions of section 4 (the Board on Employee Rights) or section 5 (the Federal court action). An employee, his representative, or any organization acting in his behalf, must first submit a written complaint to the agency and afford it 120 days to prevent the threatened violation or to redress the actual violation. A proviso states that nothing in the act affects any existing legal authority of the Central Intelligence Agency under 50 U.S.C. 403(c) or of the National Security Agency under 50 U.S.C. 833 to terminate employment.

SECTION 8

Section 8 provides that nothing in the act shall be construed to affect in any way authority of the directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information

pursuant to statute or executive order. In cases involving his employees, the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order is to be conclusive and such information shall be admissible in evidence in any civil action under section 4 or in any proceeding or civil action under section 5. Nor may such information be receivable in the record of any interrogation of an employee under section 1(k).

SECTION 9

Section 9 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 10

Section 10 provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency grievance procedures to enforce this act. The section makes it clear that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employee Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies through the Board under section 5, for instance, he waives his right under section 4 to take his case directly to the district court.

SECTION 11

Section 11 is the standard severability clause.

CONSTRUCTION OR ACQUISITION OF EDUCATIONAL FACILITIES IN SCHOOL DISTRICTS IN CLOSE PROXIMITY TO INDIAN RESERVATIONS

The Senate proceeded to consider the joint resolution (S.J. Res. 144) to provide for the appropriation of funds to assist school districts adjoining or in the proximity of Indian reservations, to construct elementary and secondary schools, and to provide proper housing and educational opportunities for Indian children attending these public schools, which had been reported from the Committee on Interior and Insular Affairs, with an amendment, on page 3, after line 18, strike out:

SEC. 2. For the purpose of carrying out the provisions of this joint resolution, there is authorized to be appropriated, for the fiscal year commencing July 1, 1970, the sum of \$7,500,000, and for each of the two next succeeding fiscal years, the sum of \$7,500,000, such funds to remain available until expended.

And, in lieu thereof, insert:

SEC. 2. For the purpose of carrying out the provisions of this joint resolution, there is authorized to be appropriated \$27,400,000 annually for each of the fiscal years 1971, 1972, and 1973. Such sums shall remain available until expended.

So as to make the joint resolution with the preamble read:

To provide for the appropriation of funds to assist school districts adjoining or in the proximity of Indian reservations, to construct elementary and secondary schools and to provide proper housing and educational opportunity for Indian children attending these public schools.

Whereas it is the responsibility of the Federal Government to provide educational opportunities to Indian children living on Indian reservations or on Indian land in the proximity of reservations; and

Whereas the Secretary of the Interior has found it practicable and advisable to educate Indian children in the public schools;

Whereas sufficient schools have not been constructed by the Federal Government to provide for the education of Indian children in some areas of Indian reservations served by public school districts; and

Whereas these public school districts are bonded to the limit and are unable to provide facilities, which forces many of the Indian children to attend schools in dilapidated barracks and quonset huts, or to leave the reservation to attend Indian boarding schools in other States; and

Whereas the Indians desire that their children attend public schools in their immediate locality; and

Whereas the public school districts are willing to accept the Indian children if funds can be obtained to construct adequate facilities; and

Whereas the Bureau of Indian Affairs has facilities where necessary in connection with new school facilities; and

Whereas the cost to the Government of educating the Indian children in these areas would be decreased if provision is made for them to attend public schools in the area in which they presently reside: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to enter into a contract or contracts with any State or local educational agency for the purpose of assisting such agency in the construction or acquisition of classrooms and other facilities in school districts adjacent or in close proximity to Indian reservations necessary for the education of Indians residing on any such reservation. Any such contract entered into by the Secretary pursuant to this joint resolution shall contain provisions requiring such contracting agency to—

(1) provide Indian students attending such facilities in any school district the same standard of education as provided non-Indian students in such district;

(2) operate such facilities as a part of the public school system and provide a program of instruction meeting the standards required by such State or local educational agency for other public schools under the jurisdiction or control of such agency; and

(3) meet, with respect to such facilities acquired or constructed pursuant to such contract, the requirements of the State and local building codes, and other building standards set by any such State or local educational agency for other public school facilities under its jurisdiction or control.

SEC. 2. For the purpose of carrying out the provisions of this joint resolution, there is authorized to be appropriated \$27,400,000 annually for each of the fiscal years 1971, 1972, and 1973. Such sums shall remain available until expended.

Mr. MONTTOYA. Mr. President, I wish to express my strong support for the resolution, Senate Joint Resolution 144, now before us to provide additional funds for the construction of schools near Indian reservations.

I am pleased to have joined my distinguished colleague from New Mexico, Senator CLINTON ANDERSON, in cosponsoring this important measure. Basically, Senate Joint Resolution 144 would authorize the appropriation of construction funds to assist local public school districts in the education of Indian children who re-

side on reservations and Indian lands near reservations in proximity of public school districts.

In the past, assistance to these school districts under Public Law 815 has proven wholly inadequate. Actual appropriations under this law have been negligible, and there is at present a tremendous backlog of applications under Public Law 815. Under no circumstances can we continue to depend on this source for meaningful assistance for school districts with large numbers of Indian children.

Even should Public Law 815 funds be forthcoming for these school districts, these funds relate only to classroom space. The needs of school districts responsible for educating Indian children, whose parents are not taxpaying Federal Government workers or military personnel extend far beyond classroom construction. Funds are also needed for cafeterias, libraries, and recreation facilities.

Enactment of Senate Joint Resolution 144 would go far to meet these needs. It would permit public school districts to provide high quality education for Indian children without removing the children from their homes and sending them to distant boarding schools. If the school districts are to be adequate to the task of educating Indian children attending schools within their boundaries, financial assistance must be afforded them.

I commend the Senate Committee on Interior and Insular Affairs for recognizing the need for this legislation and acting promptly in reporting it to the Senate floor. I am pleased this committee has, appropriately, raised the authorization figure in the resolution to more realistically reflect the true requirement. The resolution provides \$27.4 million annually for the next 3 fiscal years. This figure compares to the total need of \$82,175,000, estimated by the Bureau of Indian Affairs.

Mr. President, I think this is a small amount to ask for, considering the scope of the problem. These funds would make possible direct assistance from the Bureau of Indian Affairs, and school districts receiving such assistance would be required to provide Indian students with the same educational standards as are provided non-Indian students. This proposal represents an intelligent and critically needed solution—at least in part—to the crisis we face in Indian education.

I urge my colleagues in the Senate to join me in support of this important legislation.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-874), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of Senate Joint Resolution 144, introduced by Senator Anderson, for himself, Senator Montoya and several other cosponsors, is to provide for the appropriation of funds to aid public school districts near Indian reservations in the construction of classrooms, housing and other necessary educational facilities for Indian children attending these schools.

NEED

There are today approximately 120,500 Indian children attending public elementary and secondary schools in or near Indian areas and another 52,000 are attending Bureau of Indian Affairs schools. Some 17,000 Indian children are attending mission or parochial schools. In each of these three categories of schools there are unmet construction needs. In the case of Bureau schools, there is an unfunded construction backlog need of some \$200 million. The committee has no information on the needs of the mission and the parochial schools but it is well known that such needs do exist and that such schools are generally in increasing financial distress and some are closing thereby increasing the need for additional school facilities in those areas.

At the request of Senator Anderson, the Bureau of Indian Affairs has furnished an estimate of the total construction needs for public schools that serve Indian children in or near Indian areas. The list of the estimates for the various States, which totals some \$82.2 million, is as follows:

Estimate of public school construction needs in Indian areas

State:	Amount
Alaska	\$1,000,000
Arizona	20,000,000
Colorado	(1)
Idaho	(1)
Iowa	150,000
Kansas	130,000
Minnesota	2,500,000
Montana	5,055,000
Nebraska	2,390,000
Nevada	1,500,000
New Mexico	40,000,000
North Dakota	795,000
Oklahoma	155,000
Oregon	500,000
South Dakota	4,500,000
Washington	1,500,000
Wisconsin	1,500,000
Wyoming	500,000
Total	82,175,000

(1) Not available.

For many years the Congress has been advised that the movement of Indian children away from boarding schools and Bureau of Indian Affairs day schools and into the public system should be accelerated. The Meriam Report of 1928, the survey report of the Bureau of Indian Affairs made in 1954, the report to the Secretary of the Interior by the Task Force on Indian Affairs in 1961, the President's message of March 6, 1968, and most recently the 1959 Report of the Special Subcommittee on Indian Education of the Senate Committee on Labor and Public Welfare have very strongly urged that Indian children receive their education in public schools near the reservations.

Enactment of Senate Joint Resolution 144 is recommended because assistance from other sources, such as Public Law 81-815 funds, has proven to be totally inadequate to meet Indian education needs. Even when money is available under Public Law 815, a local school district may obtain funds only for construction directly related to classroom space. This restriction may be a valid one when taken in reference to facilities in a district having adequate school income and used by non-Indian students whose parents are taxpaying Federal Government workers or military personnel. However, the education of Indian children is a totally different and unrelated Federal obligation. Funds spent on facilities for Indian children should not be considered as expenditures which merely supplement existing school budgets. These funds are necessary for every construction need a given school facility may encounter, including cafeterias, libraries and recreation facilities. A very small tax base as well as chronic poverty conditions exist in many school districts with the responsibility of educating

Indian children. The end result is insufficient school income in any form.

The backlog of unfunded Public Law 815 applications is another factor to be considered. Even if Public Law 815 funds could be used for complete school facilities, there appears to be no hope of obtaining needed money from this source. Public Law 815 appropriations have fallen more than 6 years behind estimated requirements. Yet, in most school districts serving Indian children, there has been a rapid increase in the number of students. Present facilities are overcrowded and construction funds are falling further behind each year.

A long and exhaustive review of the impacted area program under Public Law 815 and the supplementary boarding school system has demonstrated that modern, State-operated educational facilities in the proximity of Indian homes are the only reasonable solution to Indian educational needs. In the long run, this approach will allow Indian children to receive a good education and at the same time remain exposed to their own time-honored traditions and social patterns.

AMENDMENT

Senate Joint Resolution 144 would authorize funds which would enable the Secretary of the Interior to enter into contracts with State or local educational agencies to assist in the construction of acquisition of educational facilities in school districts in close proximity to Indian reservations. These contracts would contain requirements that Indian students receive the same standard of education as provided non-Indian students.

As originally introduced, this legislation provided an authorization of \$7.5 million for each of the fiscal years 1971, 1972, and 1973 to meet the construction funding needed. Following receipt of information from the Bureau of Indian Affairs and various State education officials, the estimates of construction needs rose to approximately \$82.2 million. The committee has adopted amendatory language to reflect the more than \$80 million figure.

COMMITTEE COMMENT

The purpose of this bill is to provide a stronger educational program for Indians both on and off the reservations. It is the intention of the committee to guarantee to the Indian students educational quality and opportunities equal to that received by students in public schools.

This committee calls for the Bureau of Indian Affairs to lend its full effort to the full funding of this authorization. The committee further urges that through this program Indian children be removed from boarding schools and placed in public schools near their homes as rapidly as possible. It is the intent and hope of the committee that boarding schools may be eliminated from the Indian education program at the earliest possible date and, further, that the responsibility for the education of Indian children be transferred to the local public school districts, where at all possible.

The Commissioner of Indian Affairs is requested to report to this committee at the end of each year for which funds are authorized by this legislation concerning:

(1) Whether or not the authorization is sufficient to accomplish the goals of Congress in improving Indian education;

(2) The progress made in transferring students from boarding schools to public schools;

(3) The progress in turning over to the States the responsibility for the education of Indian children; and

(4) Any problems that may have been encountered in carrying out the desires of this committee that better education programs be provided for the Indian students.

There may be problems, for instance, in busing children because of lack of roads. The committee would hope such needs would be outlined and recommendations be made

for possible solutions. In this and other matters the committee wishes full information from the Commissioner in his annual report. The committee cannot overemphasize its desire that this program be implemented fully and with dispatch.

COST

The resolution, as amended, would authorize \$27,400,000 for each of the fiscal years 1975, 1976 and 1977 to carry out its purposes. It is expected that appropriations for the Bureau of Indian Affairs would be reduced in a like or greater amount as Indian education responsibility is transferred to local school districts.

The amendment was agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. MANSFIELD subsequently said: Mr. President, I ask unanimous consent that the Pastore rule not be applicable to the bills passed on the call of the calendar this morning; in other words, that the rule of germaneness will start when the unfinished business is laid before the Senate.

The PRESIDING OFFICER (Mr. MOHR). Without objection, it is so ordered.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from New York (Mr. JAVITS) is now recognized for 40 minutes.

Mr. JAVITS. Mr. President, I had in mind this morning presenting a series of amendments to the administration's Manpower and Training Act and explaining them to the Senate, as I am the author of the administration's bill and I feel that the situation has developed to require additional amendments and additional opportunities under the bill.

But, Mr. President, before I do that, I wish to comment on a situation which developed this morning and which I think is of the greatest importance to the country.

THE ECONOMY

Mr. JAVITS. Mr. President, I speak now as ranking member on the minority side of the Joint Economic Committee of both Houses of Congress. It will be noted that the Chairman of the Federal Reserve Board, Arthur Burns, who used to be part of the President's staff, has urged that, in his words:

There may be useful, albeit very modest, role for an incomes policy to play in shortening the period between suppression of excess demand and restoration of price stability.

Reportedly, in making this statement Dr. Burns who is said to have been urging President Nixon to apply generalized pressure against wage and price boosts, reiterated his long-held view that such efforts cannot work well for a long period.

Mr. President, I note also this morning that, in a speech in New York, the Secretary of Housing and Urban Development, Mr. Romney, has come out quite clearly for one of the recommendations

made by the whole minority on the Joint Economic Committee.

I wish to emphasize that there are the recommendations made by the whole minority of the Joint Economic Committee.

I now wish to read them into the Record. It comes from the minority report in the President's Economic Report which is the classic document issued in April of every year.

It reads as follows:

We recommend that the administration immediately announce the inflationary implications of unusually significant wage and price decisions. The Council of Economic Advisers should calculate and make public how much each price increase adds to the wholesale or consumer price index, and indicate other prices which would be adversely affected by such an increase. It should publish specific arguments why a particular industry feels it necessary to raise its prices, and suggest Government studies of situations where particular bottlenecks or unusual supply and demand conditions exist.

Similarly, on the wage front, the Council should publish the price implications of unusual collection bargaining agreements, including the timing of the wage increases under different assumptions, the productivity experience of workers in the industry, the industry's profit situation and whether industry officials feel the increases will necessitate price increases.

These activities should not be considered the foundation for more detailed intervention by the Government in individual wage and price decisions. However, we see no harm in opening up price and wage decisions which significantly affect the economy to the eyes of the public. Public scrutiny could well have a salutary effect in discouraging price and wage increases that would have inflationary consequences.

Mr. President, that is the proposal of the minority of the Joint Economic Committee, now in essence backed by the Secretary of Housing and Urban Development, Mr. Romney, and indicated—although he dealt only with the principle involved—by the Chairman of the Federal Reserve Board, Mr. Burns. At one and the same time, we note that the Chairman of the Council of Economic Advisers, Dr. McCracken, apparently has rejected the idea and retained his fidelity, which represents that of the administration, to the fiscal and monetary means for dealing with the present very unsatisfactory economic situation.

However, it is worthy of note that press reports indicate that Dr. McCracken has conceded that because of changing economic conditions, management and labor would be more conducive to Government appeals to hold the price and wage line.

Now, Mr. President, I rise this morning to support the position taken by Dr. Burns and by Secretary Romney and to urge the President to adopt this view.

Later in the week, I shall be making an extensive speech on the economy outlining why I believe the economic situation of the country, present and forecast, has been brought to such a point in terms of confidence by the Vietnam war, making that an additional, major reason why we have to expedite our withdrawal from Vietnam.

In the meantime, however, there is no reason why the measures that should be

taken and which are a direct result of the fact that the financial implications of the Vietnam war have been swept under the rug for years and have not been faced up to by the country, should not now be faced up to.

We can only hope to ameliorate the situation, even though it cannot be fully corrected until we get out of the Vietnam war. We ought to do everything we can to face up to the fact that we are in war. We have not done this. We have not done it in matters of taxation. We have not done it with respect to a ceiling on expenditures. We have not done it with respect to wage and price guidelines, or with respect to what Dr. Burns properly calls an "incomes policy." It is for this reason that I fully support the position of Dr. Burns and Secretary Romney, and dissent from the apparent position of Dr. McCracken.

I urge the President to pay the most serious attention to the urgent need for an "incomes policy" which will endeavor to establish some restraint upon skyrocketing wages and prices and which takes cognizance, of course, interest rates and the shortage of money for loans for legitimate purposes in this country.

Mr. President, I hope the President will recognize that while this may not be the whole answer to the very dangerous economic condition which the country now faces, it would provide partial remedy. And right now such a partial, short-term remedy becomes a matter of the highest priority in terms of the economy of America.

I hope the President will pay very strict attention to these two outstandingly important advisers who have given him, in my judgment, exactly the right advice at the right time.

Bear in mind that this advice is backed up by the views of the minority of the Joint Economic Committee which is by no means composed of wild-eyed radicals, but is composed of some of the most solid and deep conservative thinkers on economic problems in the Senate and the House of Representatives. A complete caucus of all Republicans in the Senate also met and discussed these minority views before they were finalized.

Mr. President, I might say that I am very proud to note that the Senator from Iowa (Mr. MILLER), who was in the Chamber a moment ago, is one of the minority members on the Joint Economic Committee and has given this matter considerable thought.

I hope the President will find the time to read the views of the minority on the Joint Economic Committee.

MANPOWER AMENDMENT TO BOOST PUBLIC SECTOR JOBS TO FIGHT HIGH UNEMPLOYMENT

AMENDMENT NO. 634

Mr. JAVITS. Mr. President, I submit today on behalf of myself, our distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Jersey (Mr. CASE), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from